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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
COMMONWEALTH EDISON )  
COMPANY, )  
 )  
 )  
Proposed general increase in )  
electric rates. (Tariffs filed )  
June 30, 2010. )

No. 10-0467

Chicago, Illinois  
January 11, 2011

Met pursuant to notice at 9:00 a.m.

BEFORE:

MS. CLAUDIA SAINOT and MR. GLENNON DOLAN,  
Administrative Law Judges.

1 APPEARANCES:

2 MR. RICHARD BERNET  
MR. EUGENE H. BERNSTEIN  
3 10 South Dearborn, Suite 4900  
Chicago, Illinois 60660

4 -and-

ROONEY, RIPPIE & RATNASWAMY, LLP, by  
5 MR. E. GLENN RIPPIE  
MR. JOHN E. ROONEY  
6 MR. JOHN RATNASWAMY  
350 West Hubbard Street, Suite 430  
7 Chicago, Illinois 60654  
Appearing on behalf of ComEd;

8  
MR. JOHN FEELEY, MS. JENNIFER LIN and  
9 MS. MEGAN McNEILL  
160 North LaSalle Street, Suite C-800  
10 Chicago, Illinois 60601  
Appearing on behalf of Staff;

11  
12 MS. KAREN L. LUSSON, MS. SUSAN L. SATTER  
MR. MICHAEL BOROVIK  
13 MS. JANICE A. DALE  
100 West Randolph Drive, 11th Floor  
14 Chicago, Illinois 60601  
Appearing on behalf of the People of the  
15 State of Illinois;

16 ROWLAND & MOORE, LLP, by  
MR. STEPHEN J. MOORE  
17 200 West Superior Street, Suite 400  
Chicago, Illinois 60610  
18 Appearing on behalf of Natural Resources  
Defense Council and Dominion Retail, Inc.;

19  
MR. RONALD D. JOLLY  
20 30 North LaSalle Street, Suite 1400  
Chicago, Illinois 60602  
21 Appearing on behalf of the City of  
Chicago;

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1 APPEARANCES: (CONT'D)

2 MS. KRISTIN MUNSCH  
3 MS. CHRISTIE HICKS  
4 309 West Washington Street, Suite 800  
5 Chicago, Illinois 60606  
6 Appearing on behalf of CUB;

7 DLA PIPER LLP (US), by  
8 MR. CHRISTOPHER J. TOWNSEND  
9 MR. CHRISTOPHER N. SKEY  
10 MR. MICHAEL R. STRONG  
11 203 North LaSalle Street, Suite 1900  
12 Chicago, Illinois 60601  
13 Appearing on behalf of REACT;

14 BALOUGH LAW OFFICES, LLC, by  
15 MR. RICHARD C. BALOUGH  
16 MS. CHERYL DANCEY BALOUGH  
17 One North LaSalle Street, Suite 1910  
18 Chicago, Illinois 60602  
19 Appearing on behalf of the CTA;

20 JENKINS AT LAW, LLC, by  
21 MR. ALAN R. JENKINS  
22 2265 Roswell Road, Suite 100  
23 Marietta, Georgia 30062  
24 Appearing on behalf of The Commercial  
25 Group;

26 LUEDERS, ROBERTSON & KONZEN, by  
27 MR. ERIC ROBERTSON  
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31 Appearing on behalf of IIEC;

32 OFFICE OF THE GENERAL COUNSEL, by  
33 MR. LOT COOKE  
34 1000 Independence Avenue SW  
35 Washington, DC 20585  
36 Appearing on behalf of the U.S. Department  
37 of Energy;

1 APPEARANCES (CONTINUED):

2 BOEHM, KURTZ & LOWRY, by  
3 MR. KURT J. BOEHM  
4 36 East Seventh Street, Suite 1510  
5 Cincinnati, Ohio 45202  
6 Appearing on behalf of Kroger Company;

7 JOHN B. COFFMAN, LLC, by  
8 MR. JOHN B. COFFMAN  
9 871 Tuxedo Boulevard  
10 St. Louis, Missouri 63119  
11 Appearing on behalf of AARP;

12 HINSHAW & CULBERTSON, LLP, by  
13 MR. EDWARD R. GOWER  
14 400 South Ninth Street, Suite 200  
15 Springfield, Illinois 67201  
16 Appearing on behalf of Metra.

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20 SULLIVAN REPORTING COMPANY, by  
21 Carla L. Camiliere, CSR  
22 Steven T. Stefanik, CSR  
Tracy Overrocker, CSR

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	<u>I N D E X</u>					
			Re-	Re-	By	
	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>
1						
2	ROSS C. HEMPHILL					
3	(recalled)		367			
			369			
4			380			
			459		467	
5				478	483	
					486	
6	MICHAEL McMAHAN					
		491	497			
7	TERENCE DONNELLY					
		494	561			
8	RALPH C. SMITH					
		517	522			559
9			562			584
			589			
10			596	666	669	
				670		
11	ALAN HEINTZ					
		677	683			
12			685		692	
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<u>E X H I B I T S</u>			
<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>	
3	REACT CROSS		
	#2	386	459
4	#3	391	459
	#4	397	
5	#5	402	
	#6	404	459
6	#8	420	459
	#9	426	
7	#10	432	
	#11	435	459
8	#12	437	
	#13	441	
9	#14	586	588
10	DOE		
11	#1.0-1.5, 2.0-2.8,3.0&4.0		490 490
12	COMED		
13	#9.0 revised,9.1, 60,60.1-60.5		493 493
14	#8.0,8.1-8.3,20.0, 20.1,32,32.1,32.2,		496 496
15	32.3,32.4,58.0,58.1, 58.2-58.10		496 496
16	#51.2-51.4,75,75.1, 75.2-75.4		682 682
17	AG/CUB		
18	#3.0-3.3,9.0-9.1 #5		522 674
19	STAFF CROSS		
20	#8	608	
	#9	621	
21	#10	625	
	#11&12	653	
22			

1           JUDGE SAINSOT: Good morning.

2           By the authority vested in me by the Illinois  
3           Commerce Commission, I now call Docket No. 10-0467.  
4           It is the matter of the Commonwealth Edison Company,  
5           and it concerns ComEd's proposed general increase in  
6           electric service rates.

7           Will the parties present identify themselves for the  
8           record please.

9           MR. RIPPIE: Glenn Rippie, and John Ratnaswamy,  
10          last name spelled, R-a-t-n-a-s-w-a-m-y. The firm is  
11          Rooney, Rippie and Ratnaswamy, LLP, 350 Hubbard  
12          Street, Chicago, Illinois 60604 on behalf of  
13          Commonwealth Edison.

14          MS. McNEIL: Appearing on behalf of Staff  
15          witnesses of the ICC, Megan McNeill, John Feeley and  
16          Jennifer Lin, 160 North LaSalle, Suite C-800,  
17          Chicago, Illinois 60601.

18          MR. ROBERTSON: Eric Robertson, Lueders,  
19          Robertson and Townsend, P.O. Box 735, 1939 Delmar,  
20          Granite City, Illinois 62040 on behalf of the  
21          Illinois Industrial Consumers.

22          MR. TOWNSEND: On behalf of the Coalition to

1 Request Equitable Allocation of the Costs Together or  
2 REACT, the law firm of PLA Piper, LLP, U.S., 203  
3 North LaSalle, Chicago, Illinois 60601 by Christopher  
4 J. Townsend, Christopher N. Skey and Michael R.  
5 Strong.

6 MR. GOWER: On behalf of Metra, I'm Ed Gower  
7 from Hinshaw and Culbertson, LLP, 400 South Ninth,  
8 Suite 200, Springfield, Illinois 62701.

9 MR. JOLLY: On behalf of the City of Chicago,  
10 Ronald D. Jolly, 30 North LaSalle, Suite 1400,  
11 Chicago, Illinois 60602.

12 MR. JENKINS: Good morning, your Honors, Alan  
13 Jenkins for the Commercial Group, 2265 Roswell Road,  
14 Marietta, Georgia.

15 MS. HICKS: For the Citizen's Utility Board  
16 Christie Hicks and Kristin Munsch, 309 West  
17 Washington, Suite 800, Chicago, Illinois 60606.

18 MR. BOEHM: Good morning. Kurt Boehm, appearing  
19 on behalf of the Kroger Company, 36 East Seventh  
20 Street, Suite 1510, Cincinnati, Ohio.

21 MR. MOORE: Stephen Moore with the law firm of  
22 Rowland & Moore, LLP, 200 West Superior Street, Suite

1 400, Chicago, Illinois 60654, appearing on behalf of  
2 Dominion Retail, Inc., and the Natural Resources  
3 Defense Council.

4 MR. BOROVIK: Michael Borovik appearing on  
5 behalf of the People of the State of Illinois,  
6 Michael Borovik, Susan Satter and Karen Lusson,  
7 100 West Randolph, 11th Floor, Chicago, Illinois  
8 60601.

9 MR. COFFMAN: Appearing on behalf of AARP, I'm  
10 John B. Coffman, 871 Tuxedo Boulevard, St. Louis,  
11 Missouri, 63119.

12 MR. BALOUGH: Appearing on behalf of the  
13 Chicago Transit Authority, Richard C. Balough, Cheryl  
14 Dancey Balough, Balough Law Offices, LLC, One North  
15 LaSalle Street, Suite 1910, Chicago, Illinois 60602.

16 Appearing on behalf of the United  
17 States Department of Energy.

18 MR. COOKE: Lot Cooke, 1000 Independence Avenue,  
19 Southwest, Washington, D.C. 20585.

20 MR. BERNSTEIN: And on behalf of Commonwealth  
21 Edison Company, Richard Bernett and Eugene H.  
22 Bernstein, 10 South Dearborn, Chicago, Illinois

1 60603.

2 JUDGE DOLAN: Any appearances over the  
3 intercom?

4 (No response.)

5 Let the record reflect no additional  
6 appearances.

7 Mr. Townsend, I have an understanding  
8 that you wish to make a statement.

9 MR. TOWNSEND: If I may speak to the currently  
10 pending petition for interlocutory review and the  
11 ALJ's ruling on our motion to compel from Friday.

12 As you know, we have been in  
13 discussions with ComEd about being able to review  
14 some of the information that they're going to be  
15 providing in response to your ruling on our motion to  
16 compel from Friday.

17 We have not yet seen that information,  
18 but it's been suggested to us that ComEd is looking  
19 to provide us with a sample of some of that  
20 information. They were looking to it either last  
21 night or this morning. We haven't yet seen that  
22 information, but we have now seen ComEd's response to

1 our petition for interlocutory review.

2 As I think I had mentioned on Friday,  
3 we thought that we had put the issue of the sixth set  
4 of data requests, which were the subject of your  
5 ruling on Friday, we thought that we had put that at  
6 issue within our petition for interlocutory review  
7 and that that would have provided a mechanism to be  
8 able to fully inform the Commission about the status  
9 of those issues.

10 ComEd chose not to engage on that in  
11 its response to the petition for interlocutory  
12 review, essentially, said as of the time of our  
13 filing of that petition you had not ruled on our  
14 pending motion to compel.

15 As a result, the Commission does not  
16 currently have the full picture before it and REACT  
17 is not interested in making unnecessary filings, but  
18 rather is interested in making substantive progress  
19 in terms of discovery. And we are hopeful that  
20 ComEd's responses to the motion to compel will be  
21 informative.

22 We have discussed the issue with our

1 expert, who is a former ComEd engineer, trying to  
2 understand what we should anticipate seeing from  
3 ComEd in response to your ruling on the motion to  
4 compel. He expects that to include some detailed  
5 sketches, some additional information with regards to  
6 standard versus required service, and potentially  
7 lists of standard and required assets that are  
8 provided as a basis for providing the nonstandard  
9 service.

10 So, with that information, we may be  
11 able to be progressing towards getting the  
12 information with regards to cost-based rates that  
13 REACT is looking for.

14 Again, we are hopeful to be able to  
15 continue to engage ComEd in that, and we repeatedly  
16 expressed to ComEd off the record and to your Honors  
17 that we are willing to work with them to narrow the  
18 scope of the information to make sure what they're  
19 producing actually furthers the goals of what we are  
20 trying to accomplish.

21 We don't want to waive any of our  
22 arguments with regards to the petition of

1 interlocutory review that's currently pending or,  
2 frankly, with regards to our ability to file an  
3 additional petition for interlocutory review if what  
4 we expect to see is not what we expect.

5 But we would suggest that it's the  
6 Commission's best interest to be fully informed about  
7 the issue, and perhaps, the best way to do that is to  
8 take a step back at this point.

9 So we would request that the ALJs, we  
10 know that you have to file a memorandum in response  
11 to the pending petition for interlocutory review, I  
12 think it makes sense to take a step back, wait and  
13 see what is produced in response to the ruling from  
14 Friday, and then perhaps, we can, if necessary, we  
15 can present a complete picture to the Commission that  
16 would include both sets of the data requests and the  
17 response or non-responses that we get from ComEd.

18 Alternatively, we have the hope that  
19 the information we end up getting actually gets us  
20 down the road to where we want to be.

21 So I guess the bottom line is that  
22 without waiving any arguments, we think it would be

1 in the best interest for the Commission to not  
2 address the pending petition for interlocutory  
3 review; and instead, essentially put that on hold  
4 until we see how this plays out.

5 MR. BERNSTEIN: Your Honors, I would note for  
6 the record that we have no objection to deferring  
7 action on the pending petition.

8 The pending petition was filed in  
9 advance of your ruling last Friday and we could not  
10 have possibly have anticipated that ruling, and  
11 accordingly, our response didn't address your ruling  
12 either.

13 I only note that for the record, that  
14 for the record, Mr. Townsend did point that out  
15 correctly, we have no problem deferring the  
16 proceeding on that.

17 JUDGE DOLAN: Mr. Gower?

18 MR. GOWER: I wanted to clear something up with  
19 the witness. I had asked the a witness question,  
20 subject to check. I just want to clarify that before  
21 we get started here. Nobody has asked questions since  
22 I went last. It would just take a minute or so.

1           JUDGE DOLAN:  Okay.  Mr. Hemphill, I would just  
2 remind you, you are still under oath.

3                               (Witness previously sworn.)

4                               ROSS C. HEMPHILL,  
5 called as a witness herein, having been first duly  
6 sworn, was examined and testified as follows:

7                               FURTHER CROSS-EXAMINATION

8                               BY

9                               MR. GOWER:

10           Q     Mr. Hemphill, yesterday I asked you  
11 questions concerning the fact that the cost of  
12 service in the '05 rate case was -- the original  
13 cost-of-service analysis for the railroad class was  
14 8.4 million -- in excess of 8.4 million.  And in the  
15 '07 rate case, the proposal from ComEd for cost of  
16 service for the railroad class in its initial filing  
17 also was 8.4 million.

18                               Then I asked you, subject to check, if  
19 you would confirm that the cost of service for the  
20 railroad class in this case, in the most recent ComEd  
21 filing, was under 6 million.

22                               Do you recall those questions?

1           A     Yes, I do.

2           Q     I have now had a chance to go back and  
3     look, among others, that Mr. Heintz' analysis and, in  
4     fact, of the three cost-of-service studies that have  
5     been tendered in this case by Commonwealth Edison,  
6     two of those show cost of service for the railroad  
7     class under \$6 million, and one of them is  
8     6.35 million.

9                     Is that consistent with your  
10    understanding?

11          A     Yes.

12          MR. GOWER:   That's all I had. I represented,  
13    subject to check, it was under 6 million, and one of  
14    them is over.

15                     Thank you very much.

16          JUDGE DOLAN:   Thank you.

17                     Mr. Robertson, are you going to  
18    proceed next?

19          MR. ROBERTSON:   Yes.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Good morning, Dr. Hemphill.

5 A Good morning.

6 Q My name is Eric Robertson. I represent the  
7 Illinois Industrial Consumers. And I would like to  
8 ask you about a statement that you make at Page 7 of  
9 your rebuttal testimony, ComEd Exhibit 46.0.

10 There, you suggest that if one class  
11 does not pay its fair share of costs, another class  
12 ultimately must pick up the bill, which results in a  
13 subsidy; is that correct?

14 A That's correct.

15 JUDGE SAINSOT: What page are you on?

16 MR. ROBERTSON: Say again.

17 JUDGE SAINSOT: What page are you on?

18 MR. ROBERTSON: Page 7, top of the page, 138 to  
19 140. And it's Exhibit 46.0

20 BY MR. ROBERTSON:

21 Q Now, would you agree, Dr. Hemphill, that in  
22 order to determine whether a particular class is

1 paying its fair share of costs one must have an  
2 accurate and valid cost-of-service study?

3 A I agree.

4 Q And to the extent that the study is  
5 accurate and valid, it has properly allocated among  
6 the various customer classes, all the costs of all  
7 the Company's distribution system; is that correct?

8 A Yes, that's the purpose of the  
9 cost-of-service study.

10 Q Now, would you agree that in Docket  
11 08-0532, the Commission identified several concerns  
12 it had with ComEd's cost-of-service study?

13 A Yes, it did.

14 Q And would you agree that one of the  
15 reasons, not the only reason, but one of the reasons  
16 that the Commission refused to move rates to full  
17 cost of service for all classes was that it was  
18 concerned about the accuracy of the company's study?

19 A Yes, one aspect of it.

20 Q So in that instance, would you agree that  
21 the order suggests that the Commission did not feel  
22 comfortable in determining whether a particular class

1 was paying its fair share of costs because of the  
2 problems it saw in the company's cost-of-service  
3 study?

4 A Based on what I reviewed, I believe the  
5 Commission -- and I can't speak for the Commission,  
6 but just by their actions of starting a movement, but  
7 not moving entirely towards what full cost is, my  
8 interpretation of what they did was they agreed  
9 directionally; meaning, that there was a subsidy, but  
10 they didn't feel comfortable in terms of the  
11 magnitude.

12 Q They couldn't determine based on the study  
13 performed by the Company what the full cost of  
14 service was.

15 Do you agree with that?

16 A Yeah, they could not determine what the  
17 entire magnitude of that subsidy was.

18 Q They could not determine what each class'  
19 fair share of cost of service was?

20 A Not precisely.

21 Q Then you and I can disagree about how  
22 precise it was. Okay.

1                   Now, in your direct testimony, you  
2     indicated, if my notes are correct, that the  
3     adjustments ComEd made to its cost-of-service studies  
4     was to use coincident peak data to allocate certain  
5     distribution costs; is that correct?

6           A     That's correct.

7           Q     When the Staff cross-examined you  
8     yesterday, they asked you some questions about "coins  
9     and peaks" and the term "coincidence."

10                   Do you remember those questions?

11          A     Yes, I do.

12          Q     Now, would you agree there is a difference  
13     between coincidence at the local level, such as on a  
14     single circuit, and coincidence with the system peak?

15          A     Yes, I agree.

16          Q     Now, assume a hypothetical circuit with  
17     street lighting load being the only load on the  
18     circuit.

19                   Do you have that fact in mind?

20          A     I do.

21          Q     And would you agree that the coincident  
22     peak of the customers on that circuit would probably

1 occur at night, their coincident peak, the collective  
2 coincident peak?

3 A The coincident peak of the circuit, which  
4 would be the collection of customers served on that  
5 circuit would not occur at night.

6 Q Would not occur?

7 A Would not occur at night.

8 Q If street lighting customers were the only  
9 customers on the circuit?

10 A I'm sorry. I forgot the preface.

11 Yes, it would.

12 Q Yes, it would occur at night?

13 A Yes, it would occur at night.

14 Q Thank you. A light went on in my head when  
15 you said that, I guess.

16 Would you agree that the coincident  
17 demand of these lighting customers on that  
18 circuit -- and this is their coincident demand, is  
19 not likely to be coincident with the system peak  
20 since it occurs at night?

21 A Yes, I would agree.

22 Q Would you agree that the system planners

1 have to design the circuit to meet the coincident  
2 demand of the customers on that circuit no matter  
3 when it occurs?

4 A For distribution, that's correct, yes.

5 Q Now, I would like to talk to you about rate  
6 shock, if I may. I'm looking at your rebuttal  
7 testimony, Exhibit 36.0, Page 27, Line 619 to 623.

8 Now, if we had a hypothetical utility  
9 with the cost-of-service study that suggested that a  
10 particular class is -- a revenue allocation should be  
11 increased by 1,000 percent, and the utility  
12 recommended that rates -- the revenue responsibility  
13 of that class be moved to costs in four equal  
14 installments of 250 percent in each installment,  
15 would that be an example of gradualism?

16 I'm not too worried about -- I'm using  
17 the high numbers because -- not because I think 250  
18 percent would be necessary, but the fact that the  
19 utility is recommending that the rate's revenue  
20 responsibility be gradually increased in four steps  
21 would be an example of gradualism?

22 A Yes, that's gradualism.

1           Q     Now, if for whatever reason a particular  
2 group of customers or subclass of customers within  
3 that class would see increases, because of rate  
4 design or whatever, of 500 percent, could that be an  
5 indication of rate shock?

6           A     It depends on the circumstances.

7           Q     Okay. Let's say the customer's bill is  
8 \$1,000 a month, and as a result of the allocation  
9 it's going to go up, it's going to double. You know  
10 you only moved the class revenue responsibilities one  
11 quarter of the way to cost, this particular customer  
12 is going to see, because of the rate design or  
13 whatever, a substantially larger increase than the  
14 class average. Okay?

15          A     I understand your example.

16          Q     Now, in a percentage basis, would you agree  
17 for the hypothetical purposes that that could be an  
18 indication of rate shock?

19          A     I'm not trying to avoid your question, but  
20 what I want to say is that situation, that  
21 hypothetical is a difficult situation. It certainly  
22 is a large increase relatively speaking to one

1 customer. And generally speaking, one would try to  
2 avoid that, if at all possible.

3                   There are a lot of conditions or a lot  
4 of factors that have to be taken into consideration  
5 when you decide how to move towards costs.

6                   Obviously, the goal is to get to  
7 costs, so long as all agree what that proper cost is.

8                   Rate shock, I've been cross-examined  
9 on the term "shock" for quite some time, and I always  
10 do some thinking before coming to the witness stand  
11 and there are various definitions, and one I'm very  
12 comfortable is sudden, unexpected causing some type  
13 of financial impact. There is three things there.

14                   So if -- I'm sorry for the long  
15 answer, but if in a proceeding like this that goes  
16 back a number of dockets and there was the  
17 handwriting on the wall, so to speak, that these  
18 costs had not been recovered, I wouldn't call that  
19 unexpected. I would say that customers would be  
20 expecting that for some time. I wouldn't call it  
21 sudden. An ICC proceeding lasts 11 months;  
22 therefore, there is quite a bit of time there to

1 prepare customers for the proposal that might  
2 actually be put in place.

3 Q Well, would you agree that as a matter of  
4 general principle one does not only look at the  
5 revenue allocation; one also would look at rate  
6 impacts for either individual customers or probably  
7 subclasses or subgroups of customers in determining  
8 whether or not there may be rate shock?

9 A I would agree.

10 Q Now, could you refer to Page 8 of your  
11 direct, Line 171. That's at ComEd Exhibit 14.  
12 Page 8, Line 171.

13 A I'm there.

14 Q You use the term "significant" on Line 171.  
15 And when you used the term, did you have a particular  
16 quantification in mind?

17 A It's always adjectives that get you in  
18 trouble with testimony.

19 No, I can't say I did.

20 Q Whatever you had in mind, you were  
21 emphasizing the fact that misallocations may be -- I  
22 don't know what is the right term -- relatively

1 large?

2 A Yes.

3 Q And were you thinking in terms of cost  
4 allocations there?

5 A Yes.

6 Q And were you thinking in terms of the  
7 allocations of elements of the Company's cost of  
8 service among the customer classes?

9 A Yes.

10 Q If a cost-of-service study resulted in the  
11 misallocation of a billion dollars worth of  
12 distribution plant, would that be significant in your  
13 mind for ComEd?

14 A Yes.

15 Q Now, there are at least ten cost-of-service  
16 studies, and I'm counting those, in addition to what  
17 the Company has presented in this case -- that have  
18 been presented in this case.

19 Would you agree?

20 A I will accept that, yes.

21 Q I'm specifically thinking of the eight the  
22 Company has presented to date, and at least two

1 presented by IIC direct and rebuttal.

2 A I understand.

3 Q Would you agree that each of those studies  
4 shows varying degrees of cost responsibility for  
5 ComEd's delivery service rate classes?

6 A I would agree.

7 Q Would you agree that at least some of them  
8 even indicate that some classes ComEd has identified  
9 as paying less than their cost of service, may in  
10 fact, be paying more than their cost of service, if  
11 you know?

12 A I can't tell you that.

13 Q Okay. I don't want you to guess. If you  
14 don't know --

15 A I don't want to confuse the record and I  
16 cannot remember.

17 Q Far be it from me to confuse the record.

18 MR. ROBERTSON: That's all I have for you,  
19 Dr. Hemphill. Thank you.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. TOWNSEND:

4 Q Good morning, Dr. Hemphill.

5 A Good morning.

6 Q Chris Townsend on behalf of REACT, the  
7 Coalition to Request Equitable Allocation of Costs  
8 Together.

9 Are you familiar with REACT?

10 A To the extent that I read your statements  
11 as far as who they represent, I am.

12 Q So you know that REACT is made up of some  
13 of the largest commercial, industrial and municipal  
14 entities in Northern Illinois, along with retail  
15 electric suppliers that are interested in potentially  
16 serving residential customers, right?

17 A That's my understanding.

18 Q You're the vice president of regulatory  
19 policies and strategies at ComEd, right?

20 A That's correct.

21 Q And in that role, you provide policy  
22 direction to ComEd's retail rates, directing the

1 Retail Rates Department and managing and coordinating  
2 ComEd's relationship with Illinois regulatory bodies,  
3 including the Commission and its Staff; is that  
4 right?

5 A That's correct.

6 Q And your department is responsible for the  
7 analysis of strategic policy for ComEd's distribution  
8 of business, correct?

9 A That's correct.

10 Q And you testify that those responsibilities  
11 quote:

12 "Give you a central role in the  
13 development of ComEd's new tariffs, as well  
14 as its proposals to the Commission to  
15 modify ComEd's tariffs in response to  
16 Commission's decisions concerning rate  
17 design."

18 Right?

19 A That's correct.

20 Q You also now have executive responsibility  
21 for all state regulatory strategy functions, correct?

22 A That's correct.

1           Q     Is it fair to say that you're the most  
2     senior executive from ComEd testifying on a rate  
3     design issues in this proceeding?

4           A     That's correct.

5           Q     Is it fair to say that you're the most  
6     senior executive from ComEd testifying on policy  
7     issues in this proceeding?

8           A     I would not say all policy.

9                     I'm running through my mind here who  
10    all is testifying. I believe that yesterday Joe  
11    Trpik was cross-examined. He has testimony, and he  
12    is the chief financial officer. He is the senior VP  
13    and senior to me.

14                    Later today, I believe that you're  
15    going to have the opportunity to cross-examine Terry  
16    Donnelly, who is an executive vice president in  
17    charge of Operations, obviously senior to me.

18                    So there are a number of areas other  
19    than regulatory that are being covered in this case  
20    that I'm not responsible for.

21           Q     On regulatory policy issues, are you the  
22    most senior executive from ComEd testifying?

1           A     Yes.

2           Q     I want to discuss with you first cost-based  
3 rates.

4                     Are you familiar with that concept?

5           A     I am.

6           Q     You're aware that the Public Utilities Act  
7 requires that the charges for delivery services shall  
8 be cost-based, right?

9           A     That's correct.

10          Q     And you're aware that the Public Utilities  
11 Act also requires that rates charged to a utility's  
12 delivery service customers must reflect the  
13 facilities and services associated with such costs,  
14 right?

15          A     Correct.

16          Q     You agree that it's desirable to have rates  
17 that reflect cost causation, right?

18          A     I agree.

19          Q     Let's turn to your testimony in this case,  
20 specifically your revised direct testimony at  
21 Lines 91 to 92, starting on Page 4.

22                     Let me know when you're there.

1           A     I'm there.

2           Q     You state that cost causation has always  
3     been a linchpin of rate design, right?

4           A     That's correct.

5           Q     Further, you testify that economics teaches  
6     us without doubt that when rates are not based on  
7     costs, customers receive signals that tell them to  
8     behave in inefficient and costly ways, and as a  
9     result society is harmed through misallocation of  
10    resources, right?

11          A     Yes, that's my testimony.

12          Q     You would agree that in a restructured  
13    market, such as the Illinois retail electric market,  
14    it's even more important to accurately reflect cost  
15    causation, right?

16          A     That's correct.

17          Q     You would agree that customers do respond  
18    to price signals that they receive through delivery  
19    rates, right?

20          A     I agree with that.

21          Q     You also agree that customers do respond to  
22    price signals that they receive through delivery rate

1 design, right?

2 A I agree.

3 Q You would agree that rate designs that  
4 misallocate the costs are sending customers  
5 inaccurate price signals, right?

6 A That's correct.

7 Q And those inaccurate price signals result  
8 in inefficiency and harm to society, correct?

9 A I agree with that, yes.

10 Q Would you agree that to the extent  
11 practicable rates for each class and for each  
12 customer should reflect an allocation of ComEd's  
13 revenue requirement based on the cost of service to  
14 that class and that customer's characteristics?

15 A Yes, to the maximum extent practicable.

16 Q And you would agree that removal of  
17 artificial non-cost-based signals is an important  
18 goal, right?

19 A I agree.

20 Q If you turn to your direct testimony at  
21 Page 7, Lines 141 to 150.

22 Let me know when you're there.



1 BY MR. TOWNSEND:

2 Q I'm handing you what's been marked as REACT  
3 Cross-Exhibit 2.

4 Let me know once you have had a chance  
5 to review that.

6 MR. RIPPIE: For the record, your Honors, I  
7 note that the responsibility for this data request  
8 was designed for Witness Alongi, not for Witness  
9 Hemphill; however, obviously he can answer the  
10 question to the extent that he has knowledge.

11 THE WITNESS: I read that data request.

12 Your question is?

13 BY MR. TOWNSEND:

14 Q In REACT Data Request 6.06, REACT inquired  
15 whether ComEd has identified a standard collection of  
16 assets that it allocates with providing standard  
17 service to customers in the extra-large-load customer  
18 class, correct?

19 A Yes, that's what it says.

20 Q Would it be fair to characterize the  
21 response as saying that ComEd does not have a  
22 standard collection of assets that it associates with

1 providing standard service to customers in the  
2 extra-large-load-customer class?

3 A The response should speak for itself if  
4 it's on the record, but I do not disagree with it.

5 Q According to the response, the required  
6 distribution facilities necessary for service to each  
7 customer in the extra-large-load delivery class may  
8 have unique characteristics depending upon the  
9 customer's load and voltage requirements, the  
10 customer's location in relation to ComEd's existing  
11 distribution facilities and any operational  
12 requirements or restrictions necessary for the  
13 operation of ComEd's distribution system, correct?

14 A Yes.

15 Q And does that accurately describe the way  
16 in which the standard services are determined for the  
17 customers in the extra-large-load-customer class?

18 MR. RIPPIE: I object. It's beyond the scope  
19 of the witness' testimony and is beyond the scope of  
20 the data request that has been assigned to the  
21 witness.

22 The witness does not testify about

1 that subject. He testifies about cost-of-service  
2 policy.

3 The witnesses to talk about how  
4 individual assets are allocated to individual classes  
5 are the cost-of-service witnesses, Mr. Garcia,  
6 Mr. Alongi and Mr. Heintz.

7 JUDGE SAINSOT: I'm just curious, how do you  
8 tie Mr. Hemphill into the extra-large load?

9 MR. TOWNSEND: He actually talks about the idea  
10 of the standard service rates in the testimony that  
11 we just looked at.

12 And as opposed to using standard  
13 service rates for this class, they do something else.

14 This is the most senior executive that  
15 we are going to have from ComEd to be able to ask  
16 about what that something else is as to how it is  
17 that they allocate those costs.

18 He's already said they don't use  
19 standard service rates.

20 I'm just asking, does this accurately  
21 reflect how they do approach each of the extra-large  
22 load of customers.

1           JUDGE SAINSOT: We are going to overrule your  
2 objection, but that doesn't necessary we necessarily  
3 think you're -- just go on.

4           MR. TOWNSEND: Thank you.

5 BY MR. TOWNSEND:

6           Q     So for each individual customer in the  
7 extra-large-load customer class, there must be an  
8 individual calculation --

9           MR. RIPPPIE: The witness didn't answer your  
10 last question, Mr. Townsend.

11          THE WITNESS: Could you read it.

12                                 (Whereupon, the record  
13                                 was read as requested.)

14          THE WITNESS: Yes, it seems to.

15 BY MR. TOWNSEND:

16          Q     So for each individual customer in the  
17 extra-large-load-customer class, there must be an  
18 individual calculation of what constitutes that  
19 customer's standard service?

20          A     I couldn't say whether that's true or not.  
21 You'd have to ask Mr. Alongi.

22          Q     Do you know how standard service is

1 determined for customers in the over-10-megawatt  
2 high-voltage customer class?

3 A No, I think the specifics on the tariffs,  
4 you should really ask Mr. Alongi, so that you can get  
5 an accurate depiction.

6 Q So sitting here today, you don't know how  
7 standard service is determined for the  
8 over-10-megawatt high-voltage customer class?

9 A What I'm saying is there is a better  
10 qualified person yet to come that can answer this  
11 question.

12 Q I understand I can also ask that question  
13 of that witness.

14 I'm asking you whether or not you know  
15 how that standard service is defined for that  
16 customer class?

17 A No, I'm not able to answer that question.

18 MR. TOWNSEND: May I approach?

19 JUDGE SAINSOT: Yes, you may.

20 (Whereupon, REACT Cross No. 3  
21 was marked for identification.)

22 MR. TOWNSEND: I'm handing you what's been

1 marked as REACT Cross-Exhibit 3. Let me know when  
2 you've had a chance to review that please.

3 MR. RIPPIE: At the risk of being repetitious,  
4 for the record, that data request was also assigned  
5 to Witness Alongi.

6 JUDGE DOLAN: So noted.

7 THE WITNESS: I have read it.

8 BY MR. TOWNSEND:

9 Q In Data Request 6.07 REACT asks for copies  
10 of the instructions, guidelines or other documents  
11 that ComEd uses to determine what assets are to be  
12 considered part of standard service assets, correct?

13 A Yes.

14 Q And this data requests asks for documents  
15 related to each and every rate class, correct?

16 A Yes.

17 Q And ComEd did not produce any documents in  
18 response to this data request, correct?

19 A Yes. It looks like it refers you to the  
20 scheduled rates on file with the ICC.

21 Q That's right. And after doing that, the  
22 response says that, quote:

1                   "The specific assets that ComEd  
2                   selects to provide standard service  
3                   depends on customer's load and  
4                   voltage requirements, the customer's  
5                   location in relation to the customer's  
6                   existing distribution facilities, the  
7                   double capacity on those existing  
8                   ComEd distribution facilities and any  
9                   operational requirements or restrictions  
10                  necessary for the operation of ComEd's  
11                  distribution system."

12                   Correct?

13                  MR. RIPPPIE: Your Honors, I renew my objection.

14                   The data request is assigned to  
15                  somebody else.

16                   All that's going on here is  
17                  Mr. Townsend is asking Dr. Hemphill to read it and  
18                  that he's verifying that's what it says.

19                   It is a ComEd data response. It says  
20                  what it says. It's admissible on its own, but if  
21                  questions are going to be asked about this data  
22                  request, they ought to be posed to the witness that's

1 responsible for it. Dr. Hemphill does not discuss  
2 this issue in his testimony, he discusses rate design  
3 policy, not the details of cost-of-service study.

4 MR. TOWNSEND: Actually, with regards to this  
5 data request, this does go directly to an issue that  
6 he has in his testimony. He says that there is  
7 standard service assets for, apparently, other rate  
8 classes. He doesn't identify that extra-large load  
9 or high-voltage customers are excluded from his  
10 testimony in his prefiled testimony.

11 But this says, based upon what you  
12 testified about about these standard service assets,  
13 do you have any policies at all; do you have any  
14 documents that say what it is that standard service  
15 assets are.

16 This one is clearly in play based just  
17 on what he says, what documents do you have to  
18 further define what it is that you talk about, the  
19 fact that ComEd chose to assign a different witness  
20 to be responsible for a particular data request  
21 doesn't really much matter if this data request goes  
22 to a question that is directly at issue in

1 Dr. Hemphill's testimony.

2 MR. RIPPPIE: And it doesn't.

3 Line 147 talks about standard service  
4 rates; i.e., setting rates for a class of customers  
5 rather than customers individually.

6 No part of his testimony talks about  
7 the process of assigning individual assets to rates  
8 for customers.

9 Those questions are part of the  
10 cost-of-service study and part of the cost-of-service  
11 witnesses.

12 JUDGE SAINSOT: Okay. Objection sustained.

13 BY MR. TOWNSEND:

14 Q Dr. Hemphill, are you aware of any written  
15 instructions, guidelines or other documents that  
16 would be relied upon to determine whether any  
17 specific load or voltage requirements would  
18 constitute standard service for any class?

19 A I am not aware of such.

20 Q Literally no documents that relate --

21 MR. RIPPPIE: Asked and answered.

22 JUDGE SAINSOT: Sustained.

1           MR. TOWNSEND: I haven't had a chance to ask  
2 the question. I understand. I'll move on.

3 BY MR. TOWNSEND:

4           Q     Let's turn to Page 8 of your rebuttal  
5 testimony. Let me know when you're there.

6           A     Which rebuttal testimony, Exhibit 40 or 46?

7           Q     I would guess that it's 46 because that  
8 deals with rate design, and I've confirmed that. It  
9 is 46.

10          A     Which page?

11          Q     Page 8 please.

12                     There you state that, quote:

13                     "ComEd seeks to set delivery  
14 service rates on traditional cost causation  
15 principles and other goals of rate design  
16 to ensure that all customers are  
17 paying their fair share for delivery  
18 service."

19                     Correct?

20          A     I see that, yes.

21          Q     You opine that ComEd's preferred embedded  
22 cost-of-service study or ECOSS is the best way of

1 accomplishing those goals, correct?

2 A I'm not sure I opine, but, yes.

3 Q And just so we are on the same page, the  
4 ECOSS in question is the ECOSS that ComEd presented  
5 with its rebuttal testimony, correct?

6 A That's correct.

7 Q Your opinion is necessarily premised on the  
8 belief that the ECOSS reflects cost causation,  
9 correct?

10 A That's correct.

11 MR. TOWNSEND: May I approach?

12 JUDGE SAINOT: Yes, you can.

13 MR. TOWNSEND: I'm handing you what is being  
14 marked as REACT Cross-Exhibit 4.

15 Let me know once you have had a chance  
16 to review that.

17 (Whereupon, REACT Exhibit No. 4  
18 was marked for identification.)

19 THE WITNESS: Well, there is five pages here.

20 Do you want me to read all of it  
21 before I start answering questions?

22 BY MR. TOWNSEND:

1 Q No, I will point you to specific areas.

2 Are these excerpts from the final  
3 order from ICC Docket No. 08-0532?

4 A Yes, that's what it looks like.

5 Q I will refer to this as the Special  
6 Investigation Order. All right?

7 A That's fine.

8 Q Please turn to the first page, which is  
9 Page 38 of the Special Investigation Final Order and  
10 look at the final paragraph. Let me know once you  
11 have had a chance to read that.

12 Actually, that states that, quote:

13 "Based upon ComEd's tariffs and  
14 the description of the system provided to us,  
15 we find that ComEd's current method of  
16 allocating transformer costs is not  
17 appropriate when the exiting voltage of  
18 transformers is secondary, the transformer  
19 can only serve secondary customers and  
20 should be allocated as secondary system  
21 costs."

22 Is that right?

1           A     That's what it says.

2           Q     In the first sentence when referring to  
3     ComEd's current method of allocating transformer  
4     costs, that would be pursuant to ComEd's ECOSS,  
5     correct?

6           A     That's correct.

7           Q     The Commission concluded that there are  
8     certain assets that based on the assets  
9     specifications are not appropriate to charge to  
10    certain customers, correct?

11          A     That's what it says.

12          Q     Please turn to the paragraph that begins at  
13    the bottom of Page 39 and ends on Page 40. Let me  
14    know once you have had a chance to review that.

15          A     I have reviewed it.

16          Q     The Commission directs the parties to  
17    examine the different voltage levels within classes  
18    requesting, quote, "further review," unquote, in this  
19    2010 rate case of costs assigned as either primary or  
20    secondary costs and allocated as general costs  
21    combining percentages of primary and secondary usage,  
22    correct?

1           A     Correct.

2           Q     In order to examine the issue of assignment  
3 of primary and secondary usage cost among the  
4 customer classes, it is necessary to know the voltage  
5 levels at which particular customer classes are  
6 served, right?

7           MR. RIPPPIE: Object to the question for the  
8 reason that I previously raised.

9                     The witness has testified that the  
10 cost ought to be allocated in accordance with valid  
11 ECOSS.

12                    He is not the ECOSS expert. He does  
13 not sponsor ECOSS. He does not describe how the  
14 ECOSS are done, let alone how the specific ECOSS that  
15 Mr. Townsend is referring to is performed.

16                    These questions are appropriately  
17 directed to other witnesses.

18           MR. TOWNSEND: This witness is the witness, the  
19 person, at ComEd who is responsible for implementing  
20 decisions of the Commission. That's his  
21 responsibility.

22                    This is a question of what was the

1 Company directed to do by the Commission in this  
2 order. There's no one who is better to answer that  
3 question than this witness.

4 MR. RIPPIE: I wholly -- sorry.

5 MR. TOWNSEND: He has to understand what it is  
6 that the Commission was ordered -- that was ordering  
7 in order to be able to direct the people at the  
8 Company to implement that decision. He has to  
9 understand that.

10 MR. RIPPIE: I could not disagree more.

11 You asked him a specific question  
12 about a data point that's necessary to implement  
13 ECOSS. He is the executive. I did not object to  
14 your questions of what the Commission required of the  
15 Company, but then you started asking questions about  
16 what data is necessary to perform an ECOSS. That's a  
17 different issue.

18 JUDGE SAINOT: Just rephrase, Mr. Townsend.

19 BY MR. TOWNSEND:

20 Q Do you know whether the issue of assignment  
21 of primary and secondary usage costs among the  
22 customer class is -- strike that.



1 REACT Cross-Exhibit 5, which is a true and correct  
2 copy of Section 16-108 of the Public Utilities Act as  
3 requested by counsel.

4 Can I draw your attention to Section  
5 16-108(d), which is on the second page of that  
6 document.

7 MR. RIPPPIE: And maybe I can save time. I'm  
8 perfectly happy to stipulate that the statute says  
9 what it says.

10 BY MR. TOWNSEND:

11 Q Well, Dr. Hemphill, are you aware of  
12 whether the statute requires ComEd to consider  
13 differences in voltage levels when constructing  
14 delivery rates?

15 A Yes.

16 Q And going back to the order in the Special  
17 Investigation proceeding, REACT Cross-Exhibit 4, did  
18 the Commission state on Page 39 regarding customers  
19 with both primary and secondary service points that,  
20 quote: "We find the rates charged to these customers  
21 should reflect their use of transformers and some use  
22 of the secondary distribution system."

1           A     Is that at the bottom of the Page, 39 or  
2 where is that?

3           JUDGE SAINSOT: Is that, maybe, on Page 40?

4           MR. RIPPIE: No, it's the paragraph on Page 39  
5 that deals with the 300 primary-only customers.

6           JUDGE SAINSOT: Second paragraph.

7           MR. RIPPIE: It's the third paragraph.

8           MR. TOWNSEND: Third paragraph.

9                     It states: "We find that the rates  
10 charged to these customers should reflect their use  
11 of transformers and some use of the secondary  
12 distribution system, correct?"

13           THE WITNESS: You read that correctly, yes.

14                             (Whereupon, REACT Cross No. 6  
15                             was marked for identification.)

16           MR. TOWNSEND: I'm handing you what's being  
17 marked as REACT Cross-Exhibit 6. It's ComEd's  
18 response to REACT Data Request 7.07.

19           MR. RIPPIE: Which for the record has been  
20 assigned to Witness Alongi.

21 BY MR. TOWNSEND:

22           Q     And in particular, I direct you to the

1 question and answer related with 7.07B and C.

2 Let me know once you have had a chance  
3 to read it.

4 A I read it.

5 Q Did REACT ask ComEd for information on  
6 voltage levels at which each extra-large class  
7 customer takes service?

8 A Yes.

9 Q Did ComEd provide that information?

10 A In B, it says, ComEd has service voltage  
11 information, but does not have information on  
12 customer utilization voltages. In order to respond  
13 to Subpart B of this request, ComEd would need to  
14 review customer facilities at over 1,800 meter points  
15 to determine that customer's utilization voltages.

16 So, no.

17 Q Let's turn to your direct testimony at  
18 Page 6. Let me know when you're there.

19 Are you there?

20 A I'm there.

21 Q At Lines 122 to 123, you state that several  
22 factors besides cost causation can properly come into

1 play; for example, promoting economic development.

2 I know there were other factors that  
3 you referenced after economic development, but did I  
4 accurately quote you?

5 A You read it up to that point, yes.

6 Q And would you agree that the members of the  
7 over-ten-megawatt customer classes are very important  
8 to the economy of Northern Illinois?

9 A Yes.

10 Q And those customers are large employers,  
11 correct?

12 A Yes.

13 Q Have you reviewed the testimony of REACT  
14 Witness Fults in the present proceeding?

15 A Yes, I have.

16 MR. TOWNSEND: May I approach?

17 JUDGE SAINOT: Yes, you may.

18 MR. TOWNSEND: I will hand you what has been  
19 mark as REACT Cross-Exhibit 7., entitled, Table 1,  
20 Impact of Proposed Rebuttal Distribution Charges for  
21 the Extra Large, Over-Ten-Megawatt Customers.

22 Your Honors, this is taken directly

1 from REACT Exhibit 4 Page 8.

2 MR. RIPPIE: Maybe I misheard, I apologize for  
3 interrupting.

4 Did you say 7? I thought the rebuttal  
5 is 7.

6 MR. SKEY: The last one was No. 6, but it was  
7 DR 7. This should be REACT No. 7.

8 MR. RIPPIE: I apologize. My confusion. Thank  
9 you very much.

10 BY MR. TOWNSEND:

11 Q Let's look to the third from the right  
12 column in Mr. Fults' table.

13 That indicates that under ComEd's  
14 current proposal extra-large-load-class customers  
15 will face annual increases of between 129 thousand  
16 4 hundred and 64 dollars and 1.13 million dollars per  
17 year, per customer over their current rates, correct?

18 THE WITNESS: I apologize. I was looking at the  
19 data. I was not catching all of your question, but I  
20 believe what you're asking me to do is verify the  
21 number.

22 And one question I had I was just

1 reviewing Mr. Fults' testimony again this morning and  
2 I'm not quite sure what this is.

3 Is this a typical customer bill  
4 comparison or is this -- what does this represent?

5 BY MR. TOWNSEND:

6 Q What is your understanding of what this  
7 represents, Dr. Hemphill?

8 A I was very confused by the testimony. I'm  
9 sorry, Mr. Townsend. I'm not sure what this number  
10 does represent, so I can't really verify the number  
11 unless I know what it does represent.

12 Q Well, actually, did you respond in your  
13 testimony to this table?

14 A To these calculations?

15 Q In his testimony, surrebuttal testimony,  
16 rate design, non-rate design? Did you anywhere make  
17 a statement with regard to any of the calculations  
18 that were presented in Mr. Fults' direct testimony in  
19 this case?

20 MR. RIPPIE: The point of mine, I guess, it  
21 will be an objection. This witness has a total of  
22 four questions and answers addressing Mr. Fults'

1 testimony. They occur at Pages 9 and 10 of his  
2 surrebuttal testimony and on pages -- less than 14  
3 lines on Page 27 of Exhibit 46. He is not the  
4 witness that examines merits of Mr. Fults' work.

5 MR. TOWNSEND: Who is?

6 MR. RIPPIE: Well, to be -- I'm not objecting  
7 to you asking him questions assuming these numbers  
8 are valid, but this witness is not the witness to  
9 verify their validity. That's way beyond the scope  
10 of his testimony.

11 MR. TOWNSEND: Fair enough. We can do that.

12

13

14

(Whereupon, there was a  
change of reporter.)

15

16

17

18

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22

1 BY MR. TOWNSEND:

2 Q Assuming -- well, first of all, can we  
3 first confirm, you did not in your testimony  
4 challenge any of these calculations, correct?

5 A I did not.

6 Q And you did not propound any data requests  
7 with regards to these -- these calculations, correct?

8 A What was the verb you used?

9 Q Propound.

10 Did you ask your attorneys to ask  
11 questions about these calculations?

12 A No.

13 Q So assuming that these calculations are  
14 correct, this shows that for a ten-megawatt customer,  
15 the proposed increase under ComEd's current proposal  
16 would be \$129,464, correct?

17 A Mr. Townsend, I'm not trying to be  
18 uncooperative, but all I can tell you is that what's  
19 on that sheet is 129,464. I cannot tell you what  
20 that represents.

21 Q Okay. Are you aware of any ComEd witness  
22 that took issue with any of Mr. Fults's calculations?

1           A     I can't say I am.

2           Q     You were present yesterday for the  
3 cross-examination of Mr. Guerra, correct?

4           A     I was.

5           Q     We discussed the magnitude of ComEd's  
6 current proposed rate increase compared to the rate  
7 of inflation since 1997, correct?

8           A     Yes.

9           Q     And you recall Mr. Guerra punting to you on  
10 those issues?

11          A     He did.

12          Q     Would you agree that ComEd's current  
13 rates -- not its proposed rates, but its rates  
14 currently in place -- for the extra large  
15 over-ten-megawatt customer class are about 70 percent  
16 above the rates established in the 1999 ComEd rate  
17 case?

18          A     Is -- you're speaking at a class level?

19          Q     Yes.

20          A     I would accept that.

21          Q     And the rates that ComEd proposed in its  
22 rebuttal testimony in this case take that percentage

1 up to 124 to 136 percent increases over the 1999  
2 rates, correct?

3 A Yes.

4 Q And if ComEd were to impose the full  
5 increase that ComEd claims is justified by its ECOS  
6 in this case, it would be an increase of 233 to 247  
7 percent over the 1999 rates, correct?

8 A That would be, as I understand it, at the  
9 full embedded cost of service study results level,  
10 which is not the proposal in this case.

11 Q Are you aware that Mr. Fults has labeled  
12 ComEd's proposed rate increase as massive and  
13 unjustified?

14 A Yes. He also said mammoth, which I found  
15 interesting.

16 Q You indicate in your rebuttal testimony  
17 that you disagree with Mr. Fults for three reasons,  
18 right, and that's in your rebuttal testimony at Page  
19 27?

20 A Yes.

21 Q One of the reasons that you cite for  
22 disagreement is that increasing the largest customer

1 class's rates moves those customers towards cost,  
2 right?

3 A Yes.

4 Q Another argument you make is that  
5 mitigation addresses any rate shock concerns, right?

6 A Yes.

7 Q And the third argument that you make is  
8 that increasing rates would send a strong signal from  
9 the Commission that the Commission expects prices to  
10 reflect cost?

11 A Yes.

12 Q And as Mr. Rippie pointed out, you do make  
13 additional arguments responding directly to Mr. Fults  
14 in your surrebuttal testimony, right?

15 A Yes.

16 Q In your surrebuttal testimony at Page 9,  
17 you address a statement from Mr. Fults that ComEd's  
18 increase is not cost-based, correct?

19 A Yes.

20 Q And in response, you state that the  
21 over-ten-megawatt class has benefited from subsidies  
22 in ComEd's 2001 and 2005 rate cases, right?

1           A     Yes.

2           Q     Aside from identifying subsidies, you did  
3 not make any further arguments in response to  
4 Mr. Fults's statement in your surrebuttal testimony,  
5 right?

6           A     That's correct.

7           Q     So let's first address the issue of moving  
8 toward cost, your first criticism in the rebuttal  
9 testimony, okay?

10          A     Okay.

11          Q     It's fair to say that in order for an  
12 increase towards ECOS rates to move towards a cost  
13 basis, that the ECOS must, in fact, be cost-based,  
14 right?

15          A     Yeah, if I could just restate. It would be  
16 accepting the validity of the results of the ECOS.

17          Q     But let's suppose that despite ComEd's best  
18 arguments, the Commission were to find that the cost  
19 to serve a particular class was below what ComEd's  
20 ECOS says.

21                         You understand the hypothetical?

22          A     I understand the hypothetical.

1           Q     And under that scenario, moving towards  
2 ECOS would not necessarily be a move towards  
3 cost-based rates, would it?

4           A     I believe what you're stating is that if it  
5 was determined that the ECOS A is now inaccurate and  
6 ECOS B is the accurate representation of what the  
7 cost allocation is and it results in a lower  
8 allocation, then that would be a different outcome.

9                     Is that what you're asking?

10          Q     Well, in your hypothetical, it would be  
11 improper for the Commission to move towards ECOS A if  
12 it found ECOS A didn't accurately reflect costs,  
13 right?

14          A     In your hypothetical, yes.

15          Q     In our hypothetical, right?

16          A     Yes.

17          Q     Because if the ECOS is not accurate, then  
18 adjusting rates based on the ECOS means inaccurately  
19 adjusting rates, correct?

20          A     Yes.

21          Q     In fact, if the Commission were to find  
22 that the actual cost-based rates for a particular

1 class were less than ComEd's proposed increase  
2 towards ECOS, that proposed increase would not be  
3 cost-based, correct?

4 A Correct.

5 Q So if the Commission wanted to send a  
6 strong signal about cost-based rates, but it did not  
7 believe ComEd's ECOS was cost-based, using ECOS to  
8 set the rates would be a bad approach, correct?

9 A Yeah, it would be ill-advised policy to  
10 move towards something that is not believed to be  
11 accurate, yeah.

12 Q Let's move on to mitigation. Let's first  
13 agree on a working definition of mitigation.

14 Would you agree that mitigation is a  
15 reduced increase to cost-based rates for policy  
16 reasons?

17 A I don't want to mince words, but it may  
18 make a difference in later questions; but I don't  
19 think you have to say for policy reasons.

20 Mitigation is -- is tempering effect,  
21 basically.

22 JUDGE SAINOT: Are you speaking of some

1 economic definition of that word?

2 MR. TOWNSEND: I just want to -- I'm sorry.

3 Are you asking that of the witness or of me?

4 JUDGE SAINSOT: Yeah. I mean, Webster's

5 Dictionary can tell you what the word means.

6 MR. TOWNSEND: I just want to understand --

7 JUDGE SAINSOT: Okay.

8 MR. TOWNSEND: -- whether this witness, when  
9 this witness uses that word, agrees with Webster,  
10 because he might not.

11 JUDGE SAINSOT: Okay. Well, you can proceed.

12 THE WITNESS: I'm sorry. Did I use that word  
13 in my testimony?

14 BY MR. TOWNSEND:

15 Q I guess you use the word "gradualism" as  
16 opposed to mitigation; is that right?

17 A Correct.

18 Q So what's your definition -- well, would  
19 you agree that gradualism is a reduced increase to  
20 cost-based rates?

21 A Gradualism is gradually moving towards an  
22 objective. And if the objective is cost-based rates,

1 then gradualism basically implements the process of a  
2 stepwise move.

3 Q So if there aren't accurate cost-based  
4 rates that are established, you can't have gradualism  
5 apply towards achieving that goal?

6 You first have to understand what that  
7 goal is in order to be able to apply the principle of  
8 gradualism?

9 A There were a couple questions there, but  
10 I'll give you an answer and see if it satisfies.

11 Yes, you have to have a goal. You  
12 have to have a starting point, and then you decide  
13 whether or not you're going to go there in what could  
14 be called a flash-cut or an immediate move all the  
15 way, or you implement a policy of gradualism and you  
16 take it in steps. Could be three, four...

17 Q You have to have a start point; you have to  
18 have an end point, right?

19 A That's correct.

20 Q And that your end point that you're  
21 advocating in this case in terms of the application  
22 of gradualism here is gradualism towards cost-based

1 rates, correct?

2 A That's correct.

3 Q So if it turn -- if it turns out that the  
4 ECOS-based rates are not cost-based, then it would be  
5 inappropriate under your definition of gradualism to  
6 talk about moving toward ECOS-based rates as being  
7 consistent with the concept of gradualism?

8 A We're working ourselves into a tautology  
9 here. But, certainly, if you are -- if you  
10 completely dismiss the goal, the objective, you know,  
11 what cost-based rates are, and you have no sense as  
12 to what they are in any order of magnitude, then,  
13 yes, it would be difficult to put together a movement  
14 towards that using gradualism.

15 Q Let's face this in a different way.

16 Would you agree that it's appropriate  
17 for the Commission to consider rate shock when  
18 determining whether rates have been properly  
19 designed?

20 A Yes.

21 Q Would you agree that the Commission should  
22 try to avoid designing rates that have a

1 disproportionate impact upon a particular class of  
2 customers?

3 A Could you define disproportionate?

4 Q How would you define disproportionate?

5 A I'm sorry, Mr. Townsend. I didn't use the  
6 word.

7 Q Do you think the issue of proportionality  
8 enters into the consideration of rate shock?

9 A I'm just having a hard time conceptualizing  
10 proportionality in the sense that you're trying to  
11 use it. I would say it's not disproportionate to be  
12 moving towards cost-based, given the policy is that  
13 rates are to be based on costs.

14 If, indeed, the accepted embedded cost  
15 of service study showed that a significant move  
16 needed to be made in order to correct the rates and  
17 eliminate subsidies.

18 MR. TOWNSEND: May I approach?

19 JUDGE SAINSBOT: Yes, you may.

20 (Whereupon, REACT Cross  
21 Exhibit No. 8 was  
22 marked for identification)

1 BY MR. TOWNSEND:

2 Q I hand you what's being marked as REACT  
3 Cross Exhibit 8.

4 Did you present testimony in the  
5 special investigation proceeding?

6 A Yes, I did.

7 Q Were you cross-examined in that case?

8 A Yes, I was.

9 Q Is this -- can I draw your attention to the  
10 bottom of Page 268 -- 264. I'm sorry. Is this a  
11 transcript of that cross-examination, in part?

12 A Yes, that's what it looks like.

13 Q Can I draw your attention to the bottom of  
14 Page 264, the top of Page 265.

15 And there in the response to the  
16 question, Would you agree that ComEd should try to  
17 avoid designing rates that have a disproportionate  
18 impact on particular customers, you responded, To the  
19 maximum extent practicable, yes?

20 A Correct.

21 Q Do you feel that ComEd has an obligation to  
22 avoid rate shock?

1           A     It certainly is an objective.  Whether it's  
2     an obligation, I don't know if that's an  
3     interpretation of some law or what, but I -- I would  
4     grant you that it is a definite objective of  
5     Commonwealth Edison to avoid rate shock.

6           Q     Can you turn to Page 266 of REACT Cross  
7     Exhibit 8.

8           A     I'm there.

9           Q     At Line 5, the question is, Do you feel  
10    that ComEd has an obligation to avoid rate shock?  
11    Lines 8, your answer is, Yes, ComEd always should and  
12    will, as long as I'm here, do everything to avoid  
13    that, correct?

14          A     Yes.

15          Q     In response to a question from  
16    Mr. Robertson this morning, you indicated that rate  
17    shock has three components that there is a sudden  
18    unexpected increase in that results in financial  
19    impact.

20                         Is that a fair characterization of  
21    your earlier testimony?

22          A     Yes.

1           Q     So in order for rate shock to occur, in  
2 your opinion, there must be something unexpected  
3 happen, correct?

4           A     Yes.

5           Q     Did ComEd survey its customers to determine  
6 what they expect the outcome of this rate case to be?

7           A     No.

8           Q     Would it be reasonable for customers to  
9 expect that the Commission would set rates based upon  
10 costs?

11          A     Yes.

12          Q     Let's move on to your arguments against  
13 Mr. Fults's conclusion from the surrebuttal testimony  
14 regarding subsidies. That's in your surrebuttal  
15 testimony at Page 9, correct?

16                         This is Exhibit 71.

17          A     71. Yes, I'm sorry. I'm getting there.

18          Q     At the bottom of Page 9, going to Page 10.

19          A     I am there.

20          Q     You identify two alleged subsidies, one  
21 from the 2005 rate case and one from ComEd's 2001  
22 rate case, right?

1           A     Yes.

2           Q     And you do not identify any other potential  
3 source of subsidies in your surrebuttal testimony?

4           A     That's correct.

5           Q     And in CG Cross Exhibit 1 that you  
6 sponsored yesterday, those are the only two alleged  
7 sources of subsidies, correct?

8           A     Yes.

9           Q     And you agreed with Mr. Robertson this  
10 morning that you need to have an accurate cost of  
11 service study to determine whether there are  
12 subsidies, correct?

13          A     Yes.

14          Q     You would agree that in order to determine  
15 whether there are subsidies, it's necessary to first  
16 accurately identify the costs associated with  
17 providing service?

18          A     Yes.

19               MR. RIPPIE: This is all asked and answered.

20               JUDGE SAINSOT: I agree.

21                         Move on, Mr. Townsend.

22

1 BY MR. TOWNSEND:

2 Q Well, would you agree that there must first  
3 be a clear understanding of what costs are  
4 appropriately allocated to each customer class before  
5 you can determine whether there's a subsidy?

6 A I think, as I answered Mr. Robertson this  
7 morning, within an order of magnitude, yes.

8 Q When you state that there were subsidies in  
9 rates established in those prior cases, you're saying  
10 that that is ComEd's current view, correct?

11 A Yes.

12 Q You did not present any testimony in this  
13 proceeding regarding ComEd's views in prior  
14 proceedings, correct?

15 A No.

16 Q You're not testifying that this is the view  
17 of the Commission, right?

18 A As far as the preceding orders or  
19 proceedings that I referred to?

20 Q That the Commission endorsed the concept of  
21 subsidies.

22 A I think what it stated is the outcome of

1 given cases resulted in that.

2 Q Do you have a citation that you -- in mind?

3 A Well, I thought what the answer to REACT  
4 8.01 to 8.06 -- or excuse me, 8.06 alone, in answer  
5 to that, it cites the results from previous  
6 Commission orders.

7 Q Well, let's go ahead and examine those.  
8 Let's turn first to the 2001 rate case.

9 When ComEd made its filing in the 2001  
10 rate case, did ComEd endorse using its embedded cost  
11 of service study to set rates?

12 A Well, I wasn't a part of that case. I  
13 would assume so.

14 Q Is there something that I could show you  
15 that might help you --

16 A Certainly.

17 Q -- refresh your recollection as to what  
18 ComEd's position was in that case?

19 A Certainly.

20 (Whereupon, REACT Cross  
21 Exhibit No. 9 was  
22 marked for identification)

1 BY MR. TOWNSEND:

2 Q I hand you what's being marked as REACT  
3 Cross Exhibit 9, which is a portion of the order from  
4 an ICC Docket No. 01-0423, the 2001 ComEd rate case.

5 Let me know when you've had a chance  
6 to review that.

7 I guess, in particular, I'd ask you to  
8 look at the top of Page 134 entitled ComEd's  
9 Position.

10 A I see that.

11 Q Do you recall now whether ComEd was  
12 endorsing a marginal cost or an embedded cost  
13 approach?

14 A It states that the Company witnesses  
15 testified that marginal cost ratemaking was  
16 consistent with the principles of cost causation.

17 Q It says that they strongly advocated for  
18 marginal cost of service study to allocate costs,  
19 correct?

20 A That's what it states.

21 Q And there are five witnesses that  
22 presented, including the executives, correct?

1           A     Yes.

2           Q     Now, turning to Page 137, the next page of  
3     the 2001 rate case final order.  If you could look at  
4     the last paragraph.

5                     That says that, quote, The Commission  
6     finds that the foregoing top-level split in the use  
7     of the across-the-board approach for nonresidential  
8     customers and the embedded cost of service approach  
9     for residential customers is supported by the  
10    evidence in the record and produces delivery services  
11    rates that are fair, reasonable and cost-based for  
12    all customer classes, correct?

13          A     That's what it states.

14          Q     So the Commission did not rely upon ComEd's  
15    ECOS to set -- strike that -- to allocate the costs  
16    among the nonresidential customers, right?

17                 MR. RIPPPIE:  I'm sorry.  Can I hear the  
18    question again.

19                 MR. TOWNSEND:  I'll rephrase it.

20    BY MR. TOWNSEND:

21          Q     In that case, the Commission did not rely  
22    upon ComEd's ECOS to allocate the costs among the

1 nonresidential customer classes, right?

2 A I would have to read the entire order in  
3 order to agree with you regarding that statement as  
4 to whether it used any type of cost information.

5 Q The Commission concluded that it was going  
6 to allocate costs on an across-the-board increase to  
7 nonresidential customers, right?

8 Isn't that what that says?

9 A That's what it says.

10 Q And the Commission found that the  
11 across-the-board increase to nonresidential customers  
12 was, quote, cost-based for all customer classes,  
13 right?

14 MR. RIPPPIE: I object. We're now -- we now  
15 have the problem of asking the witness to read an  
16 excerpt.

17 The order says what it says. And, in  
18 fact, an ECOS was used to do the top-level split and  
19 then across-the-board allocators were used below that  
20 point, which is -- and I appreciated, Mr. Townsend,  
21 he rephrased his question to say "among." But the  
22 witness is not testifying as to personal knowledge

1 here. We're just reading an order.

2 JUDGE SAINSOT: Where are you going,  
3 Mr. Townsend?

4 MR. TOWNSEND: Well, this witness has said that  
5 there were subsidies based out of the 2001 rate case.  
6 Well, he said that if the rates that are set are  
7 cost-based, then there aren't subsidies.

8 The Commission -- he now has provided  
9 a data request response that says, I again think that  
10 that 2001 rate case resulted in subsidies. This says  
11 there were no subsidies because they were cost-based  
12 rates.

13 MR. RIPPIE: I'm not saying Mr. Townsend can't  
14 make that argument.

15 My objection was simply all we're  
16 doing is reading an order. It's an order. He can  
17 cite it for what it says, but the witness has no  
18 personal knowledge of what that paragraph means. And  
19 he's asked to read the whole order, if you're  
20 going -- or at least that portion of the order, if  
21 you're going to ask him questions about it.

22 It's not --

1           MR. TOWNSEND: This -- this direct -- look at  
2 his surrebuttal testimony, not to mention the data  
3 request response, which goes into an interpretation  
4 of that order. His -- his -- his surrebuttal  
5 testimony says -- he offers an interpretation of the  
6 Commission's order in Docket No. 01-0423, Line 242 --

7           JUDGE SAINSBOT: Mr. Townsend -- Mr. Townsend,  
8 if you want to argue what this order means or doesn't  
9 mean, that's a place for a brief.

10                         So move on, please.

11 BY MR. TOWNSEND:

12           Q     You didn't cite to that portion of the  
13 order in 01-423 (sic) in either your testimony or the  
14 data request response that you provided to REACT, did  
15 you?

16           A     No.

17           Q     Let's turn to the 2005 rate case final  
18 order.

19                         And would you agree that that's where  
20 we should look to determine whether or not the rates  
21 that were set were cost-based rates as to the final  
22 orders of the Commission?

1           A     I agree.

2                           (Whereupon, REACT Cross  
3                           Exhibit No. 10 was  
4                           marked for identification  
5                           as of this date.)

6   BY MR. TOWNSEND:

7           Q     I hand you what's being marked as REACT  
8   Cross Exhibit 10.  These are Pages 195 and 196 of the  
9   final order in the 2005 rate case, right?

10          A     Yes.  Is there a particular portion you  
11   want me to read?

12          Q     Well, on Page 195, the Commission  
13   summarizes the positions of ComEd and IIEC, among  
14   others, underneath the Commission's analysis and  
15   conclusion section, correct?

16          A     Correct.

17          Q     And in that case, ComEd was advocating for  
18   the elimination of the over-ten-megawatt customer  
19   class, correct?

20          A     Yes.

21          Q     And that was the assumption that was built  
22   into ComEd's ECOS in that proceeding, right?

1           A     Yes.

2           Q     And IIEC presented evidence that the costs  
3 of serving the over-ten-megawatt customers were  
4 significantly lower than the costs of serving other  
5 nonresidential customers, correct?

6           A     That's what it states here, yes.

7           Q     And on Page 196, the fourth paragraph,  
8 halfway through, there's a sentence that begins  
9 "further."

10                           Do you see that?

11          A     Yes.

12          Q     The Commission found the costs of serving  
13 the over-ten-megawatt customers is potentially lower  
14 than the cost of serving other nonresidential  
15 customers, correct?

16          A     Yes.

17          Q     So the Commission found that it could set  
18 fully cost-based rates for the over-ten-megawatt  
19 customers that turned out to be lower than the  
20 small-use customer rates, correct?

21          A     Yes.

22          Q     Let's now turn to the 2007 rate case.

1                   In the 2007 rate case -- you were a  
2 part of that case, right?

3           A     No, I was not.

4           Q     You were involved in the special  
5 investigation that resulted from the 2007 rate case,  
6 right?

7           A     That's correct.

8           Q     In the 2000- -- you're familiar with the  
9 Commission's order in the 2007 rate case as a result?

10          A     Yeah. Some portions of it more than  
11 others, but yes.

12          Q     Would you agree that in the 2007 rate case,  
13 ComEd took the position that there were no  
14 cross-subsidies in the then existing rates?

15          A     You said that ComEd took the position that  
16 there are no cross-subsidies?

17          Q     Could I hand you something that might --

18          A     Yeah.

19          Q     -- refresh your recollection?

20          A     Yes, please.

21          Q     In that case, ComEd president Barry  
22 Mitchell presented testimony, correct?

1           A     That's correct.

2                                 (Whereupon, REACT Cross  
3                                 Exhibit No. 11 was  
4                                 marked for identification)

5     BY MR. TOWNSEND:

6           Q     I hand you what's being marked as REACT  
7     Cross Exhibit 11, which is a portion of the  
8     cross-examination of ComEd -- then ComEd president  
9     Barry Mitchell.

10           MR. RIPPPIE:  Are you asking the witness if this  
11     refreshes his recollection?

12           MR. TOWNSEND:  I'm asking him what ComEd's  
13     position was in that case.

14           MR. RIPPPIE:  Well, if you're asking him that,  
15     then I object to you showing him one piece of  
16     testimony when that piece of testimony does not  
17     necessarily comport with the statements of other  
18     witnesses, its briefs, the data that it submitted in  
19     response to data requests.

20                                 As you may recall, there was quite a  
21     controversy in that case over what Mr. Mitchell said  
22     and what he meant.

1                   And if you're asking if it refreshes  
2 his recollection, I have no objection at all. But if  
3 you're purporting to suggest that this somehow  
4 definitively states what ComEd's position was, then I  
5 have a problem both with it being used with this  
6 witness and with that characterization.

7           MR. TOWNSEND: Well, this certainly is evidence  
8 of what ComEd's position was in that case.

9           MR. RIPPPIE: It is certainly -- you could, I  
10 suppose, move to admit it for what it's worth; but,  
11 again, that's not a question for this witness. The  
12 question here is whether it refreshes his  
13 recollection.

14 BY MR. TOWNSEND:

15           Q     Well, I guess, first of all, does it  
16 refresh your recollection?

17           A     No, it doesn't.

18           Q     Okay.

19           A     And the reason why I hesitated, it didn't  
20 sound accurate.

21           Q     Do you have any reason to believe that  
22 that's not an accurate depiction of the

1 cross-examination of then ComEd president Barry  
2 Mitchell?

3 A I have the transcripts in my hand. Though  
4 I believe these are transcripts from that case --

5 MR. RIPPIE: Okay.

6 THE WITNESS: -- they are what they are.

7 MR. RIPPIE: I'd be happy to stipulate that  
8 those are accurate copies of the transcript.

9 BY MR. TOWNSEND:

10 Q Okay. In the 2007 rate case, ComEd did  
11 argue that its ECOS should be relied upon to set  
12 rates for the over-ten-megawatt customer classes,  
13 correct?

14 A That sounds accurate, yes.

15 (Whereupon, REACT Cross  
16 Exhibit No. 12 was  
17 marked for identification)

18 BY MR. TOWNSEND:

19 Q I'll hand you what's being marked as REACT  
20 Cross Exhibit 12.

21 JUDGE SAINSOT: How much more do you have,  
22 Mr. Townsend?

1           MR. TOWNSEND: One more line after this, I  
2 believe.

3           JUDGE SAINCOT: One more line?

4           MR. TOWNSEND: One more line of cross. So once  
5 we wrap up with the -- what these orders said, I  
6 would say perhaps 15 minutes.

7           JUDGE SAINCOT: You know, you asked for an hour  
8 and you're already over the hour. Can you speed it  
9 up a little?

10          MR. TOWNSEND: I'll try.

11 BY MR. TOWNSEND:

12          Q     Is this a copy of the administrative law  
13 judge's proposed order in that case?

14          A     Yes, it is.

15          Q     All right. Actually, we only have Page 205  
16 of that administrative law judge's proposed order,  
17 correct?

18          A     Correct.

19          Q     It says that ComEd argues that its ECOS is  
20 reasonable and consistent with prior studies approved  
21 by the Commission, and the Company insists that it's  
22 an appropriate instrument to use in determining

1 rates, correct?

2 A Correct.

3 Q And the administrative law judges recapped  
4 the history that we've gone through in Dockets  
5 05-0597 and 01-0423 in the next paragraph, right?

6 A Correct.

7 Q And they recommended that the Commission  
8 find that the ECOS fails in several respects to  
9 properly allocate significant costs to cost causers  
10 and to correctly measure the costs of service to  
11 various classes of -- and subclasses, correct?

12 MR. RIPPPIE: May I inquire, before we go  
13 further on the substance of this, what the purpose of  
14 showing the witness a proposed order that was not  
15 adopted by the Commission is?

16 JUDGE SAINOT: Yeah, I'd like to know that  
17 myself.

18 JUDGE DOLAN: Yeah.

19 MR. TOWNSEND: Well, again, from this witness's  
20 testimony, the question is, what is it (sic)  
21 reasonable for people to expect out of a rate case in  
22 order to determine whether or not you should expect

1 rate shock.

2                   You know, in that case, the ALJs who  
3 were the ones who are heard the evidence, as you  
4 know, said you should throw out the ECOS entirely;  
5 that it -- that you shouldn't -- the Commission  
6 shouldn't rely on that to set rates for any of the  
7 customers classes.

8           JUDGE SAINSOT: And no offense to Judges  
9 Hilliard and Haynes, but why do we care about that?

10           MR. TOWNSEND: Well, it seems like it'd be  
11 reasonable for customers to look to that --  
12 essentially, the trial court in that case -- as to  
13 what their expectations would be as to whether or not  
14 the same type of embedded cost of service study is --  
15 would be relied upon in this case.

16           MR. RIPPIE: Whatever the argument is about  
17 reasonability, it is not an order of the Commission  
18 and there's no question to this witness other than  
19 reading it.

20                   So I renew my objection.

21           JUDGE SAINSOT: Objection sustained.

22

1 (Whereupon, REACT Cross  
2 Exhibit No. 13 was  
3 marked for identification)

4 BY MR. TOWNSEND:

5 Q I'll hand you what's being marked as REACT  
6 Cross Exhibit 12.

7 JUDGE SAINSOT: You already had 12.

8 MR. TOWNSEND: Oh, I'm sorry. 13 --

9 JUDGE SAINSOT: 13.

10 BY MR. TOWNSEND:

11 Q -- which are excerpts from the final order.

12 MR. JENKINS: Your Honor, we can't see the  
13 witness back here. Can we --

14 MR. TOWNSEND: Oh, sure.

15 JUDGE SAINSOT: Thanks for pointing that out.

16 BY MR. TOWNSEND:

17 Q At the bottom of Page 206, the Commission  
18 concluded that ComEd admits that the assignment of  
19 primary and secondary distribution costs would likely  
20 reduce the total cost allocation to customers in the  
21 extra large load, high-voltage and railroad delivery  
22 classes, correct?

1           A     That's what it says, yes.

2           Q     And the Commission concluded that that  
3     overlooks the Commission's explicit policy objective  
4     of assigning costs where they belong, right?

5           A     Yeah, that's what it says.

6           Q     To your knowledge, did ComEd conduct a  
7     study in preparation for the 2007 rate case to  
8     determine which assets served the over-ten-megawatt  
9     customer classes?

10          A     I'm not aware.

11          Q     I'm sorry?

12          A     I am not aware of whether they did or not.

13          Q     Let's discuss the 2008 special  
14     investigation order. We already have identified that  
15     as REACT Cross Exhibit 4. Do you have that?

16                     I'd ask you to turn to the last page  
17     of REACT -- the next-to-last page on Page 84 of that  
18     order.

19          A     Okay. I'm there.

20          Q     Do you see where it says, 4, the following  
21     decisions are final and should be reflected in the  
22     ECOS for consideration in any subsequent action in

1 the Company's next rate case?

2 A Yes.

3 Q And the Commission proceeds to outline  
4 several requirements, including costs to serve  
5 customers who take service above and below four  
6 kilovolts, correct?

7 A Yes.

8 Q In the first heading under 4, the order  
9 states, A, customers receiving power at four  
10 kilovolts or higher are primary system customers who  
11 should be identified. Rates charged to those  
12 customers should be adjusted to reflect that they do  
13 not use the secondary distribution system.

14 Did I read that correctly?

15 A Yes, you did.

16 Q And the next subheading under 4-A, the  
17 order states, Sub B, Customers receiving power at  
18 levels below four kilovolts should be secondary  
19 system customers and charged accordingly, right?

20 A Yes.

21 Q In other words, the Commission stated that  
22 ComEd's embedded cost of service study for

1 consideration had to account for the  
2 primary/secondary split, right?

3 A Yes.

4 Q The special investigation order stated  
5 further that, quote, It is further ordered that  
6 Commonwealth Edison Company should file an updated  
7 ECOS for consideration in its next rate filing as  
8 outlined herein, right?

9 MR. RIPPIE: We can save a ton of time. I can  
10 stipulate that the order says what it says rather  
11 than have the witness continue to confirm it.

12 JUDGE SAINSOT: Where are you going with this?

13 MR. TOWNSEND: There are sections in the order  
14 that we're trying to highlight and this is the way  
15 that we're doing that.

16 MR. RIPPIE: Withdrawn.

17 JUDGE SAINSOT: Well, okay.

18 Go ahead.

19 MR. RIPPIE: I mean, how --

20 MR. TOWNSEND: So that is the last question  
21 along those lines --

22 MR. RIPPIE: Fine. Withdrawn. Withdrawn.

1 Sorry.

2 BY MR. TOWNSEND:

3 Q On June 30, 2010, ComEd made its initial  
4 filing in this instant proceeding, correct?

5 A Correct.

6 Q Did ComEd file an ECOS with that initial  
7 filing on June 30th, 2010?

8 A Yes, it did.

9 Q Did the ECOS ComEd filed on June 30, 2010,  
10 include a fully compliant primary/secondary split?

11 MR. RIPPIE: I object. It requests a legal  
12 opinion.

13 If Mr. Townsend would like to ask  
14 Dr. Hemphill about the ECOS, he can ask that  
15 question. But when he asks him whether it complies,  
16 he's asking for a legal judgment about whether or not  
17 the ECOS had to be submitted in the case or submitted  
18 in the case with the initial filing.

19 MR. TOWNSEND: Can you --

20 JUDGE SAINSBOT: All right. Is that what you're  
21 asking, Mr. Townsend?

22 MR. TOWNSEND: I'm asking this witness whether

1 or not he believed that the -- the tariffs that were  
2 filed -- whether he believed that the tariffs that  
3 were filed were compliant with the Commission's  
4 order.

5 And I would direct your Honor to this  
6 witness's testimony in direct.

7 JUDGE SAINSBOT: Overruled. Overruled. He can  
8 answer that.

9 Go ahead.

10 THE WITNESS: May I be clear on what the exact  
11 question is?

12 (Record read as requested.)

13 THE WITNESS: Yes.

14 BY MR. TOWNSEND:

15 Q Please turn to your revised direct  
16 testimony at Page 7 to 8, Lines 154 to 165. Let me  
17 know once you've reviewed that, please.

18 JUDGE SAINSBOT: What page again, Mr. Townsend?

19 MR. TOWNSEND: Page 7 to 8, your Honor.

20 THE WITNESS: Which lines?

21 BY MR. TOWNSEND:

22 Q 154 to 165.

1           A     Yes.

2           Q     And there, you say that ComEd made every  
3 practical effort to file compliant tariffs from the  
4 outset, correct?

5           A     That's what it states.

6           Q     You further state in your direct testimony  
7 that, ComEd intends to request permission to file  
8 supplemental direct testimony to address those  
9 remaining directives. Our target for doing so is 60  
10 days hence, correct?

11          A     That's what it states.

12          Q     In other words, when ComEd initially filed  
13 its case, the proposed ECOS did not reflect the  
14 directives from Section 4-A and B on Page 84 of the  
15 special investigation order, correct?

16          A     The filing did not include all of the  
17 information which ComEd was directed to provide  
18 during the case.

19          Q     In fact, until ComEd filed its verified  
20 motion for leave to file supplemental direct  
21 testimony on August 9th, 2010, ComEd did not allow  
22 the parties to formally view an ECOS compliant with

1 Sections 4-A and B on Page 84 of the special  
2 investigation order, correct?

3 MR. RIPPIE: And, you know, I renew my  
4 objection and I add to it a second grounds, which is  
5 the only possible relevance of this is to reargue the  
6 legal arguments which have been presented now three  
7 or four times to your Honors, to the Commission on  
8 the petition for leave to -- I'm sorry -- on a  
9 petition for interlocutory review and then on an  
10 attempt to seek rehearing of that review.

11 JUDGE SAINCOT: Yeah. I -- frankly,  
12 Mr. Townsend, I thought you were going in a different  
13 direction.

14 I think the issue of the meaning of  
15 the supplemental -- the consequences from the  
16 supplemental filing are an extremely dead horse. So  
17 can we move on here?

18 MR. TOWNSEND: Well, we haven't had an  
19 opportunity to cross-examine this witness about this  
20 statement that's in his direct testimony. I just  
21 have a few more questions along these lines.

22 JUDGE SAINCOT: A few more questions about the

1 consequences of the late filing?

2 MR. TOWNSEND: Not about the consequences.

3 Just -- I want to find out a little  
4 bit more about -- and I'll just ask a couple more  
5 questions about this decision for ComEd to move  
6 forward with that.

7 JUDGE SAINSBOT: Well, you can ask him what  
8 happened at ComEd. I'll allow you that, but...

9 BY MR. TOWNSEND:

10 Q Okay. Were you involved in the decision to  
11 have ComEd move forward with making a filing that did  
12 not comply with the Commission's special  
13 investigation order?

14 MR. RIPPPIE: Object to the characterization.

15 I have no problem with answering the  
16 question, was he aware -- was he involved in the  
17 decision of when to file.

18 JUDGE SAINSBOT: Yeah, just rephrase.

19 BY MR. TOWNSEND:

20 Q He uses the word "compliant." So I -- I'll  
21 use the word "compliant."

22 Were you involved in making the

1 decision to have ComEd move forward with making a  
2 filing that was not compliant with this Commission's  
3 special investigation order?

4 MR. RIPPIE: I object. His testimony has to do  
5 with compliance at a particular time. It is our  
6 position that the tariff filing is compliant. That's  
7 been clear and it's gone all the way up to the  
8 Commission.

9 So if you want to ask him about his  
10 involvement, I ask you to please not put a loaded  
11 conclusion in the question.

12 BY MR. TOWNSEND:

13 Q Were you involved with the Company's  
14 decision to move forward with making its June 30th  
15 filing?

16 A No.

17 Q Do you know why ComEd didn't wait until it  
18 had prepared all of the documents necessary to comply  
19 with the Commission's special investigation order?

20 MR. RIPPIE: Once again, there's a legal  
21 conclusion embedded in there. If the question was,  
22 do you know why ComEd didn't wait, I have no

1 objection.

2 JUDGE SAINSON: Well, I have a hearsay problem,  
3 too, because if he knows, it sounds like -- if he  
4 doesn't know, it would sound like he -- it -- it's  
5 hearsay or it could be hearsay.

6 MR. TOWNSEND: It would be an admission by the  
7 Company.

8 JUDGE SAINSON: Okay. Good point. Why don't  
9 you just rephrase.

10 BY MR. TOWNSEND:

11 Q Why -- well, did the Company ask you  
12 whether or not its June 30th filing was compliant  
13 with the Commission's special investigation order?

14 MR. RIPPY: Object to the relevance of the  
15 question. Now we're back to where I made my  
16 objection.

17 The question of whether or not the  
18 filing is compliant has been litigated fully. There  
19 is no remaining relevance to factual inquiry in this  
20 respect.

21 MR. TOWNSEND: Actually, it hasn't been  
22 litigated fully.

1           MR. RIPPPIE: Well, okay. Yes, you could, I  
2 suppose, go to an Appellate Court, but that would be  
3 in a legal issue; not -- not on this.

4           MR. TOWNSEND: Which --

5           JUDGE SAINSOT: I agree with Mr. Rippie on this  
6 point. We'll just -- because the word "compliant"  
7 can be skewed here. So let's just not use it and --

8           MR. TOWNSEND: Set that --

9           JUDGE SAINSOT: -- let's move on.

10 BY MR. TOWNSEND:

11           Q Do you know why ComEd made the filing on  
12 June 30th in the manner it did on that date instead  
13 of waiting to obtain additional information?

14           A The filing date had already been set. We  
15 had sufficient information to provide for the record  
16 to support the tariffs that were filed.

17                           There was no anticipation that there  
18 would be any change to the filed tariffs as a result  
19 of the additional information that was being  
20 collected in response to the directive of the rate  
21 design investigation.

22           Q When was the date set?

1 MR. RIPPPIE: I mean, if the witness knows.

2 THE WITNESS: I don't remember.

3 BY MR. TOWNSEND:

4 Q By whom was the date set?

5 MR. RIPPPIE: Relevance. The only --

6 JUDGE SAINSBOT: Overruled. Overruled.

7 He can ask if he knows.

8 He can answer.

9 THE WITNESS: Senior management. Senior  
10 executives at the Company agreed to the date.

11 BY MR. TOWNSEND:

12 Q Which senior executives?

13 A At Commonwealth Edison, senior executives  
14 are -- we refer to as senior VPs and higher.

15 Q Which senior VPs and higher made that  
16 decision?

17 A All of them.

18 Q Unanimously?

19 A I wasn't there.

20 Q Do you know generally when that decision  
21 was made?

22 A I don't remember.

1 Q Do you have a sense of whether it was days  
2 before or weeks before the filing or months before?

3 A We had a file date months in advance.

4 Q Was it in advance of the April 20th ruling  
5 in the special investigation order?

6 JUDGE SAINCOT: What is the April 20th ruling?

7 MR. TOWNSEND: The final order in the special  
8 investigation order.

9 MR. RIPPPIE: I understand that this is -- I  
10 don't mean to be repetitive, but this has no  
11 relevance other than to be a legal argument which is  
12 already exhausted and, frankly, I have questions as  
13 to whether it has relevance to that.

14 The witness has indicated that he was  
15 not present, but that he believes the period of time  
16 was in months.

17 I renew my objection.

18 MR. TOWNSEND: Your Honors, ComEd did not  
19 appeal that final ruling. They didn't ask for  
20 reconsideration or rehearing.

21 If they knew at the time that they  
22 weren't going to be able to file compliant tariffs,

1 the tariffs that included the information that was  
2 requested by the Commission, and, nevertheless, went  
3 forward with that filing, I think that that's  
4 something that -- and didn't ask for a rehearing of  
5 that order or further inform the Commission until  
6 they made their filing on June 30th, I think that  
7 that's something that's -- that the Commission would  
8 want to be aware of, that that was the Company's  
9 position with regards to not complying with the --  
10 the order in that case; not seeking rehearing, not  
11 seeking a clarification, but knowing that they're --  
12 once that order was issued, that they were going to  
13 file something that's not going to comply with that.

14 JUDGE SAINSON: Well --

15 MR. RIPPY: And -- I'm sorry.

16 JUDGE SAINSON: Well, that's sounds like a  
17 wonderful argument to make in a brief.

18 MR. TOWNSEND: Well, this witness will know the  
19 fact --

20 MR. RIPPY: Well --

21 MR. TOWNSEND: -- will know if -- potentially  
22 could know that if -- because he was involved in that

1 special investigation proceeding, he could know  
2 whether or not the Company knew at that time that it  
3 was not going to be -- that it was going to go ahead  
4 with the June 30th filing and that it wasn't going to  
5 be able to make a filing that included that  
6 information.

7 JUDGE SAINSOT: Well, he already said he  
8 doesn't have any personal knowledge on the subject.

9 MR. TOWNSEND: He has permanent knowledge  
10 about --

11 JUDGE SAINSOT: All right. Let me rephrase  
12 that.

13 He already said that he wasn't the  
14 decision-maker, which is not the same thing as not  
15 having --

16 MR. RIPPIE: And Mr. Townsend has now added in  
17 a whole host of questions about the decision of  
18 whether or not to seek clarification, rehearing or  
19 appeal of a different order, which are, as  
20 Mr. Townsend knows, questions infused with a variety  
21 of legal concerns far beyond whether or not we  
22 thought it would take 10 days, 30 days or 60 days to

1       come up with all the information.

2                       This exposes or at least underscores  
3       the inappropriateness of asking a fact witness why  
4       the Company made legal decisions. That is just not  
5       relevant to the question of what our revenue  
6       requirement should be or what our rate design should  
7       be, which is the purpose of this rate investigation.

8               JUDGE SAINSOT: We're going to sustain the  
9       objection.

10                      Move on, Mr. Townsend.

11              MR. TOWNSEND: No further questions.

12              JUDGE SAINSOT: Okay. No, no, no. We're  
13       taking a break unless you have something new.

14              MS. LUSSON: No.

15              JUDGE SAINSOT: Okay. How about back at 11:30?  
16       Does that do?

17              JUDGE DOLAN: Yeah, that's fine.

18              JUDGE SAINSOT: Okay.

19              MR. GOWER: Just so you know, I have five or  
20       six follow-up questions for Mr. Townsend's  
21       examination.

22              JUDGE SAINSOT: Okay.

1           MR. GOWER:  It's been a long time.  Let's let  
2 the witness take a break.  I'm not suggesting he  
3 just --

4           JUDGE SAINSOT:  Okay.

5           JUDGE DOLAN:  Okay.  So we're off the record.

6                           (Recess taken.)

7                           (Change of reporters.)

8           MR. TOWNSEND:  Your Honors, REACT moves for the  
9 admission of REACT Cross Exhibits 2, 3, 6, 8 and 11.  
10 We've already discussed those with Counsel for ComEd.

11           JUDGE SAINSOT:  Does that mean ComEd has no  
12 objection?

13           MR. RIPPPIE:  To the three data requests and the  
14 two transcripts, no.

15           JUDGE SAINSOT:  Just so we're clear,  
16 Mr. Townsend, why don't you identify those.

17           MR. TOWNSEND:  REACT Cross Exhibit 2 is the  
18 data request in response to REACT Data Request 6.06  
19 to ComEd; REACT Cross Exhibit 3 is the REACT Data  
20 Request and ComEd response to REACT 6.07; REACT Cross  
21 Exhibit 6 is the REACT Data Request No. 707 and  
22 ComEd's response; REACT 8 is an excerpt from the

1 November 2, 2009 cross-examination in ICC Docket  
2 08-0532; and REACT Cross Exhibit 11 is an excerpt  
3 from the April 28th, 2008 cross-examination in ICC  
4 Docket No. 07-0566.

5 JUDGE SAINSOT: So there's no objection? Just  
6 asking.

7 MR. RIPPPIE: Correct.

8 JUDGE SAINSOT: Okay. That being the case,  
9 your motion is granted, Mr. Townsend, and REACT Cross  
10 Exhibit 2, 3, 6, 8 and 11 are entered into evidence.

11 (Whereupon, REACT Cross  
12 Exhibit Nos. 2, 3, 6, 8 and 11 were  
13 admitted into evidence)

14 MR. TOWNSEND: Thank you, your Honor.

15 JUDGE DOLAN: Go ahead.

16 CROSS-EXAMINATION

17 BY

18 MS. LUSSON:

19 Q Good morning, Mr. Hemphill. I just want to  
20 make sure it was still morning.

21 Could I direct you to Page 18 of your  
22 direct testimony, Lines 356 through 360. There you

1 state, Misallocating fixed cost to volume metric  
2 rates creates a significant policy conflict between  
3 rates and the policy of promoting efficiency and  
4 creates a conflict of incentives for the distribution  
5 utility.

6 Do you see that?

7 A Yes, I do.

8 Q And you also state, Adopting an SFV design  
9 mitigates both this policy conflict and any financial  
10 disincentives for energy efficiency and demand  
11 management programs on the utility's side of the  
12 meter.

13 Is that your testimony?

14 A Yes.

15 Q Now, this testimony was filed before the  
16 Company filed its energy efficiency plan pursuant to  
17 Section 8-103 of the Public Utilities Act; is that  
18 right?

19 A That's correct.

20 Q And that proposal for the plan years 4  
21 through 6 under Section 8-103, that was filed on or  
22 around October 1st of 2010; is that right?

1           A     I'll accept that.

2           Q     And that plan is for years 2011 through  
3     2013; is that correct?

4           A     I believe that's true.

5           Q     And that would begin around June 1st of  
6     2011, according to the statute; is that your  
7     understanding?

8           A     It's beyond my knowledge on this, but I'll  
9     accept it.

10          Q     And assuming that's true, that plan would  
11     take effect just around the same time the rates in  
12     this case go into effect; is that correct?

13          A     They would line up, yes.

14          Q     Now, would you agree under Section 8-103 of  
15     the Act, which is the section that specifies the  
16     requirements for electric utilities related to energy  
17     efficiency, that the Company is required to offer  
18     programs that achieve specified levels of energy  
19     savings as detailed in that section of the Act?

20                     And if you'd like to refresh your  
21     memory, I do have a copy of that statute.  If you'd  
22     like to take a look at it, I'd be happy to share it

1 with you?

2 A Yes, I think I should look at it.

3 MS. LUSSON: May I approach the witness?

4 JUDGE DOLAN: Yes.

5 JUDGE SAINSON: Yes.

6 BY MS. LUSSON:

7 Q So if you look at Section B of that,  
8 Section 8-103, would you agree that electric  
9 utilities are required, under law, to implement  
10 cost-effective energy efficiency measures in  
11 accordance with the goals listed there in Part B?

12 A Yes.

13 Q And -- so whether or not ComEd has an SFV  
14 rate or a decoupling rate design, it is, in fact,  
15 required to achieve those goals under the statute;  
16 would you agree?

17 A That is correct.

18 Q In Section D of that same section it  
19 states, Utilities shall reduce the amount of energy  
20 and efficiency and demand response measures  
21 implemented in any single year by an amount necessary  
22 to limit the costs paid by retail customers; would

1 you agree?

2 And then with the caveat that there  
3 are specific --

4 JUDGE SAINSOT: I don't think Mr. Hemphill  
5 answered your last question or maybe he did and he  
6 nodded and I didn't see him.

7 THE WITNESS: No, I didn't nod. I was  
8 thinking.

9 Yes.

10 BY MS. LUSSON:

11 Q And, again, under Section D-5, the amount  
12 of energy efficiency and demand response measures  
13 that the Company can implement for any single year  
14 shall be reduced by an amount necessary to limit the  
15 estimated average net increase due to the costs of  
16 these measures as specified under that section? And  
17 that would be D-5.

18 A Yes.

19 Q So you would agree, wouldn't you, that the  
20 amount that ComEd can collect through the energy  
21 efficiency rider, that is, Rider EDA for energy  
22 efficiency programs, is capped?

1           A     Yes.

2           Q     Now, do you know if -- does the Company  
3     have any specific plans to invest in more energy  
4     efficiency and demand response programs should it get  
5     its proposed straight fixed variable rate or a  
6     decoupling rate?

7           A     There are no existing plans for that, no.

8           Q     And you have not made any specific  
9     proposals to the people in the Company who would  
10    implement energy efficiency associated with your  
11    straight fixed variable proposal, have you?

12          A     Any proposals? I'm sorry, I don't  
13    understand the question.

14          Q     I may have left out a word or two there.

15                    You have not made any specific  
16    proposals with the individuals in the Company that  
17    implement the energy efficiency programs to increase,  
18    for example, marketing or spending on those programs  
19    as a result of the Commission approving an SFV rate  
20    or a decoupling rate?

21          A     No.

22          Q     Now, looking at the bottom of Page 18 of

1 your testimony. Now, you reference an Ameren order  
2 there and going on to the top of Page 19 where you  
3 state that the Commission noted a potential conflict  
4 in approving Ameren's recovery through fixed charges  
5 of 80 percent of its fixed costs, gas delivery costs  
6 and stated SFV rates, quote, arguably decreases any  
7 disincentive AIU may perceive to implementing gas  
8 efficiency programs.

9 Do you see that?

10 A Yes.

11 Q Now, that order was entered around October  
12 of 2008, would you agree, if you know?

13 MR. RIPPIE: Miss Lusson, the footnote cites  
14 that it's September 24th of 2008.

15 MS. LUSSON: I stand corrected. The fall of  
16 2008 then.

17 THE WITNESS: Yes.

18 BY MS. LUSSON:

19 Q And would you agree that at the time the  
20 Commission entered that order, there were no  
21 statutorily required gas energy efficiency programs?

22 A I don't have that knowledge, but I'll

1 accept it.

2 Q And if, in fact, there were no statutorily  
3 required gas efficiency programs, then Ameren would  
4 have had some discretion in the amount of -- well,  
5 indeed whether they would offer energy efficiency  
6 programs; would you agree?

7 A Yes.

8 Q Now, I think in other parts of your  
9 testimony you indicate that Nicor Gas has an  
10 80 percent straight fixed variable rate and, in fact,  
11 now Peoples Gas, in fact, has that, too, doesn't it?

12 A Yes.

13 Q Have you performed any studies or analysis  
14 of these gas utilities' energy efficiency spending  
15 patterns to determine whether their level of energy  
16 efficiency spending increased after getting an  
17 80 percent straight fixed variable rate --

18 A No.

19 Q -- approved?

20 And is the same also true for the  
21 decoupling rate that's in effect in the Peoples  
22 territory; that is, have you made any attempt to

1 determine whether or not Peoples Gas has, in fact,  
2 increased its efficiency spending since obtaining a  
3 decoupling tariff as a result of a Commission order?

4 A No.

5 MS. LUSSON: Thanks, Mr. Hemphill.

6 No further questions.

7 JUDGE SAINSON: Thank you.

8 Before you do your redirect, I think  
9 Mr. Gower indicated he had a few questions of  
10 follow-up?

11 MR. GOWER: Just a couple.

12 JUDGE DOLAN: Miss Lusson, did you want your  
13 copy of the statute back?

14 MS. LUSSON: No.

15 RECROSS-EXAMINATION

16 BY

17 MR. GOWER:

18 Q Mr. Hemphill, part of your job is to  
19 comply -- is to ensure that the Commission complies  
20 with orders -- excuse me -- to ensure that ComEd  
21 complies with orders of the Commission and ComEd  
22 complies with laws and rules governing rate setting;

1 correct?

2 A Yes.

3 Q Okay. Mr. Townsend asked you some  
4 questions about REACT Cross Exhibit 6. Do you have  
5 that in front of you?

6 A They aren't numbered. Could you remind me  
7 which one it is?

8 Q I can walk through it without even -- it's  
9 the -- it's the request to REACT -- it's the data  
10 response to REACT Request 7.07 where REACT had asked  
11 Commonwealth Edison to identify the utilization  
12 voltage at each of the customer's points of service  
13 for the extra-large load class.

14 Do you recall that?

15 A I recall that, yes.

16 Q And in the answer it indicated that -- in B  
17 it said, ComEd has surface voltage information, but  
18 it does not have information on customer utilization  
19 voltages.

20 Does that help refresh your  
21 recollection?

22 A Yes.

1           Q     Okay.  Now, with respect to the railroad  
2     class, ComEd does, in fact, have service voltage  
3     information for the two customers that comprise the  
4     railroad class; isn't that correct?

5           A     That's correct.

6           Q     And those customers are, in fact,  
7     informally served at 12.5 kV; isn't that correct?

8           A     I do remember that, yes.

9           Q     Okay.  Now, in the -- Mr. Townsend also  
10    asked you questions about the statute that he has  
11    marked as REACT Cross Exhibit No. 5 and you might  
12    want to just put that in front of you, if you would,  
13    please.  It's 220 ILCS 5/16-108.

14                         Do you have that in front of you?

15          A     Yes, I do.

16          Q     In Subsection D of that law, Mr. Townsend  
17    asked you some questions about the first and second  
18    sentence of that section where it says, The  
19    Commission shall establish charges, terms and  
20    conditions for delivery services that are just and  
21    reasonable and shall take into account customer  
22    impacts when establishing such charges.  In

1 establishing charges, terms and conditions for  
2 delivery services, the Commission shall take into  
3 account voltage level differences.

4 Do you see that?

5 A I do.

6 Q Has Commonwealth Edison in this case, in  
7 your opinion, in fact, taken into account the voltage  
8 level differences in setting rates for their  
9 respective classes?

10 A I would have to look at it again to be able  
11 to answer that definitively.

12 Q Let's focus specifically --

13 MR. RIPPIE: Hang on. I'm just going to assume  
14 that you're not asking him for the legal opinion of  
15 whether they complied, but whether he understands and  
16 the way that he would use that language as to whether  
17 ComEd has done it?

18 MR. GOWER: That's correct.

19 MR. RIPPIE: Fair enough.

20 MR. GOWER: He's in charge with responsibility  
21 for seeing that you do, in fact --

22 MR. RIPPIE: I understand, but that doesn't

1 mean he could give legal opinions; but we're good.

2 BY MR. GOWER:

3 Q Mr. Hemphill, let's -- Dr. Hemphill, let's  
4 focus specifically on the railroad class.

5 Do you believe -- are you aware that  
6 the cost of service for the railroad class, in fact,  
7 imposes or assesses costs to the railroad class for  
8 facilities carrying voltages less than 12.5 kV?

9 A Could you repeat the question for me? And  
10 also, if we get too deep into the cost of service, we  
11 may want to have a cost of service expert answering  
12 the question.

13 Q You're the one I want to ask questions of  
14 today. I'll ask questions of the cost of service  
15 witness when he's here.

16 A I just want to have a complete and accurate  
17 record.

18 MR. RIPPPIE: This -- let me just make the  
19 objection then. This witness does not testify to  
20 that in his testimony. He does not defend the -- or  
21 testify to the allocation of particular assets to  
22 particular customer classes. The question is beyond

1 the scope of his direct testimony, his rebuttal  
2 testimony or the surrebuttal testimony and should be  
3 made to the cost of service witnesses.

4 MR. GOWER: This w- --

5 JUDGE SAINSOT: Mr. Gower, what -- how do you  
6 respond to beyond the scope?

7 MR. GOWER: He's testified earlier today on  
8 cross-examination about compliance with the statute.  
9 I just want to know what they've done to comply with  
10 the statute. He's their policy witness. He's the guy  
11 who is charged with the responsibility for seeing  
12 that their rates do, in fact, comply. He's got some  
13 general understanding, I assume, of the Cost of  
14 Service Study.

15 JUDGE SAINSOT: All right. Your objection is  
16 overruled. You can ask questions.

17 BY MR. GOWER:

18 Q Mr. Hemphill, I'm going to -- let me ask  
19 the question again because I think it's probably  
20 gotten lost.

21 Are you aware that the cost of  
22 service -- that any of the -- that the three cost of

1 service studies that have been prepared and tendered  
2 by Commonwealth Edison in this case all impose costs  
3 or allocate costs to the railroad class for the cost  
4 of facilities carrying voltages at less than 12.5 kV?

5 A Yes, I'm aware of that.

6 Q Okay. And can you tell me whether, in your  
7 opinion, assessing costs to the railroad class for  
8 the cost of facilities that -- where the costs aren't  
9 incurred in providing service to the railroad class  
10 complies with the language that we just reviewed in  
11 Section 16-108(d) of the Public Utility Act?

12 MR. RIPPIE: Now, I object on different  
13 grounds. Now he is asking for an opinion of this  
14 witness as to whether or not we're in compliance with  
15 the Act.

16 MR. GOWER: I'll restate the question because I  
17 think that's a fair objection.

18 BY MR. GOWER:

19 Q In your capacity as the director of Rates  
20 and Strategies -- I probably messed up your title --  
21 vice president of Rates and Strategies, you look at  
22 Commonwealth Edison's practices and procedures in

1 setting rates to try and ensure that they comply with  
2 laws, rules and prior Commission orders; correct?

3 A That is correct.

4 Q All right. And in your capacity as the  
5 vice president in charge of Rates and Regulatory  
6 Strategies, have you reviewed the proposed rates in  
7 this case to be assigned to the railroad class to  
8 ensure that they comply with the laws -- the  
9 governing laws, rules and prior Commission decisions?

10 A Yes.

11 Q Okay. And in your opinion, recognizing  
12 that the cost of service as assigned to the railroad  
13 class, costs for facilities where those costs are not  
14 incurred in providing service to the railroad class,  
15 do you believe that the rates proposed for the  
16 railroad class comply with the language in  
17 Section 16-108(d) of the Public Utilities Act?

18 MR. RIPPIE: I really wouldn't have a problem  
19 with it if you'd just ask him whether or not he  
20 thinks it takes into account voltage; but when you  
21 ask him whether or not it complies with the Act, I  
22 object.

1 JUDGE SAINSOT: Just rephrase, Mr. Gower.

2 MR. GOWER: I'm not -- you know, I'm not really  
3 asking him for a binding legal opinion with respect  
4 to the Company. I'm asking for his opinion as the  
5 guy who is responsible for seeing that the Company  
6 does, in fact, comply -- whether, in his opinion,  
7 they've complied.

8 JUDGE SAINSOT: Mr. Rippie already gave you a  
9 way to get -- to put it in a factual way.

10 MR. GOWER: Okay.

11 BY MR. GOWER:

12 Q Mr. Hemphill, do you believe that the rates  
13 set for the railroad class take into account the  
14 voltage of the facilities used to serve the railroad  
15 class in light of the fact that the Cost of Service  
16 Study assess costs to the railroad class at voltages  
17 lower than what the railroad class is served at?

18 A I would -- you would need to establish that  
19 fact with either Mr. Alongi or the cost of service  
20 expert.

21 Q What fact is it that I need to establish in  
22 order to ask you the question whether you are --

1       whether you believe that your rates set for the  
2       railroad class comply with the law?

3               MR. RIPPPIE:   Again, the question wasn't in  
4       compliance with the law, it's whether or not it takes  
5       into account voltage; but we understand.

6       BY MR. GOWER:

7               Q       What facts do you not have at your disposal  
8       that you need in order to answer the question I  
9       asked?

10              A       Maybe I can help here.

11                            If costs are being assessed or  
12       allocated for services that are not rendered, then  
13       that would not be appropriate.   You would need to  
14       establish with a cost of service expert or Mr. Alongi  
15       if, indeed, that is occurring.

16                            Does that help?

17              Q       Yes.

18                            And so in your understanding, if the  
19       railroad class is being assessed costs for facilities  
20       that provide services at voltages that have nothing  
21       to do with the service to the railroad class, that  
22       would mean that Commonwealth Edison's proposed rates

1 and charges, in your opinion, don't meet the  
2 requirements of 16-108(d); correct?

3 MR. RIPPIE: I object. We're back to the  
4 whether they meet the statute. I really have no  
5 objection to asking the fact question.

6 JUDGE SAINSOT: The objection is sustained.

7 Mr. Gower, just rephrase.

8 BY MR. GOWER:

9 Q Mr. Hemphill, I'm just trying to make sure  
10 I understand your last answer. And if I understood  
11 correctly what you said is if the -- if the railroad  
12 class is being assessed costs for facilities or  
13 services that don't provide -- that aren't provided  
14 in the provision of services to the railroad class  
15 that, in your opinion, would be inappropriate; is  
16 that correct?

17 A That's what I stated.

18 Q And that, in your opinion, would be  
19 inappropriate based upon your view of the language  
20 contained in Section 16-108(d) of the Public  
21 Utilities Act; is that correct?

22 A That would be inappropriate on a

1 theoretical level, but then I would have to consult  
2 Counsel as to whether or not we are in compliance  
3 with the law.

4 MR. GOWER: That's all I have. Thank you.

5 JUDGE DOLAN: Mr. Rippie?

6 MR. RIPPIE: I'll try to be very brief.

7 REDIRECT EXAMINATION

8 BY

9 MR. RIPPIE:

10 Q With respect to the second to last question  
11 that Mr. Gower asked you, hypothetically, if the 4  
12 and 12 kV systems in a Cost of Service Study were  
13 treated as an integrated low voltage system, would it  
14 be improper to allocate costs for both 4 and 12 kV  
15 assets to a customer taking service at either 4 or  
16 12 kV?

17 A If it's an integrated system?

18 Q Mm-hmm.

19 A That would not be inappropriate.

20 Q At several points during your  
21 cross-examination and in your pre-filed testimony  
22 you've used the word "directional" and "significant"

1 or "order of magnitude" to describe imprecision in an  
2 Embedded Cost of Service Study.

3 Are you generally aware of that  
4 testimony?

5 A Yes.

6 Q Can you explain for the Commission and the  
7 Administrative Law Judges why you used those  
8 qualifiers and why it is important to use them.

9 A It's a long-held belief of mine that the  
10 Cost of Service Study -- or cost of service  
11 allocation studies are not a precise instrument where  
12 you get exact answers, that's rarely an outcome;  
13 therefore, from case to case, year to year, as things  
14 evolve in our industry within the state, perhaps even  
15 the politics of the state, there will be adjustments  
16 this direction or that direction in terms of how that  
17 allocation is done.

18 However, there are times when a body  
19 like the Illinois Commerce Commission could look at  
20 the results and say, All right, this Cost of Service  
21 Study is not exactly -- it's not formed exactly the  
22 way we would like to see it performed, there would

1 need to be some modifications; however, it's close  
2 enough that we can see that there's a general  
3 direction that needs to be take in terms of rates.

4 So when I said "within an order of  
5 magnitude," that's what I was referring to. It's  
6 like a confidence range around it.

7 Q Mr. Robertson asked you some questions at  
8 the very beginning of your cross-examination several  
9 years ago yesterday which involved some hypotheticals  
10 with large round numbers.

11 Do you remember those hypotheticals?

12 MR. TOWNSEND: Mr. Rippie, I believe that  
13 Mr. Robertson -- it may have seemed like yesterday,  
14 it actually was this morning.

15 MR. RIPPIE: Wow, you're right. You are  
16 absolutely right. I apologize. It did seem like  
17 yesterday.

18 BY MR. RIPPIE:

19 Q Earlier this morning Mr. Robertson asked  
20 you some questions with some large round numbers in  
21 them. I apologize.

22 Do you recall that?

1           A     I recall that.

2           Q     If a Cost of Service Study hypothetically  
3 reported -- and forgive me, Eric, if I get your  
4 number wrong -- that the cost of serving a customer  
5 was roughly 5- -- a customer class was 500 units,  
6 let's call it \$500,000 and the Commission concluded  
7 that that Cost of Service Study had errors in it and  
8 that it, perhaps, should have been 400 or 450,000,  
9 are you still -- you know what, strike that.

10                         Does the fact that a Cost of Service  
11 Study has errors in it mean that it can't be validly  
12 used to determine what direction rates ought to move  
13 in in order to be cost-based?

14           A     No.

15           Q     Why not?

16           A     As I explained earlier, it's seldom with  
17 precision, therefore, there could be inaccuracies  
18 here or there in terms of the allocations; but the  
19 results should provide a general direction in which  
20 the rates should go.

21           Q     And my last question, when Miss Lusson was  
22 asking you questions, I believe there was an

1       indication made that Peoples Gas had an SFV-type rate  
2       design.  Isn't it correct that Peoples Gas has a  
3       decoupling rider and, therefore, has a species of  
4       decoupling but not SFV?

5             A       Oh, I can stand corrected on that, yes.

6             MR. RIPPPIE:  Thanks very much.

7             JUDGE SAINSOT:  Recross?

8             MS. LUSSON:  Actually, that's not true.  In the  
9       Peoples Gas case and first time it was a decoupling  
10      rider and approved and in the latest case, the rate  
11      design was revised to recover significantly more  
12      through the customer charge.

13            MR. RIPPPIE:  Okay.  You know what, let's not  
14      have a -- you're right, there's more on the customer  
15      charge but they still had VBA, so let's not argue it.  
16      You know what, the order shows what it shows and the  
17      short -- perhaps we can clear it up this way.

18            BY MR. RIPPPIE:

19            Q       Dr. Hemphill, do you think the way the  
20      Commission ought to figure it out one way or the  
21      other is to go look at the order and figure out what  
22      Peoples has?

1           A     I would agree with that.

2           MR. RIPPIE:   Thanks.

3                    REXCROSS-EXAMINATION

4                    BY

5                    MR. ROBERTSON:

6           Q     Dr. Hemphill, if we had a utility that  
7           consisted of two customer classes, Customer A and --  
8           Customer Class A and Customer Class B and we had two  
9           cost of service studies and one study showed that  
10          Customer Class A was moving toward its cost of  
11          service and the other study showed -- I'm sorry --  
12          that was paying its cost of service and Class B was  
13          paying less than its cost of service and the second  
14          study showed that Class B instead was paying its cost  
15          of service and Class A was paying less than its cost  
16          of service and that the Commission had questions  
17          about either the first study or the second study or  
18          perhaps both studies, do you believe it would be  
19          appropriate to move either class towards cost of  
20          service as measured by either study as a general  
21          direction?

22                   THE WITNESS:   Could you reread it, please?

1 BY MR. ROBERTSON:

2 Q Let me try it again and you can get some  
3 more time to think about it.

4 We have a utility with two classes,  
5 Class A, Class B and we'll add a third class,  
6 Class C.

7 A Great.

8 Q Study No. 1 shows that Class A is paying  
9 its cost of service, Class B is paying less than its  
10 cost of service and Class C is paying its cost of  
11 service.

12 Study No. 2 shows that Class A is not  
13 paying its cost of service, Class B is paying its  
14 cost of service and Class C is paying its cost of  
15 service, if the question had -- if the Commission had  
16 questions about the proper allocation of costs to  
17 Class A and Class B as measured by those studies,  
18 would it be appropriate to move rates in the  
19 direction of cost of service for either of those  
20 classes as measured by either of those studies?

21 A At the risk of really belaboring this, in  
22 the second scenario, I think you said Class A is not

1 paying its cost of service, Class B is paying its  
2 cost of service and Class C is paying its cost of  
3 service --

4 Q Yes.

5 A -- which is not possible. It's a zero sum  
6 process.

7 Q All right. Class C is paying more than its  
8 cost of service then?

9 A Okay. And I think the question that you're  
10 asking is if you have a couple of studies that you're  
11 looking at and the Commission has enough confidence  
12 to look at the results of each of those studies, in  
13 other words, they're not done in some way that's not  
14 meeting industry standards and you see that the  
15 results of those studies have flipped outcomes where  
16 one customer is paying above, but in the other study  
17 that customer is paying below and vice versa with the  
18 other customers, yes, as a decisionmaker, you would  
19 not have the confidence to move one direction or the  
20 other.

21 MR. ROBERTSON: Thank you.

22 JUDGE SAINSBOT: Is there going to be a lot of

1 recross after Mr. Jenkins?

2 (No response.)

3 Just asking. Okay.

4 RECROSS-EXAMINATION

5 BY

6 MR. JENKINS:

7 Q Dr. Hemphill, Alan Jenkins again.

8 If in a situation like the last rate  
9 case where all the rates -- all the costs of service  
10 studies showed certain classes to be overpaying, in  
11 that situation, you'd find that a reliable indicator  
12 of where a class is toward costs; correct?

13 MR. TOWNSEND: I object to the characterization  
14 of the evidence from the last rate case.

15 MR. GOWER: Second.

16 JUDGE SAINOT: Mr. Jenkins, just rephrase.

17 MR. JENKINS: Okay. Although, it is the  
18 correct evidence.

19 BY MR. JENKINS:

20 Q In a case where all the costs of service  
21 studies show particular classes paying above cost of  
22 service, you would find that a very reliable

1 indicator of that class's position; correct?

2 A Yeah, perhaps using Mr. Robertson's  
3 example, if you have a number of cost of service  
4 studies and they are all showing the same direction  
5 but maybe different magnitudes, then directionally  
6 you would have more confidence in making those  
7 changes.

8 Q And if the -- if it has been alleged that  
9 the Commission found that ComEd's ECOSS in the last  
10 case -- or in the last rate case was completely  
11 inaccurate, can you tell me why the Commission  
12 ordered the three largest classes to only move  
13 25 percent toward the ECOSS?

14 MR. TOWNSEND: Objection. Calls for  
15 speculation.

16 MR. GOWER: Second.

17 JUDGE SAINSOT: Sustained.

18 BY MR. JENKINS:

19 Q Can you tell me why ComEd has proposed that  
20 costs for certain classes only be moved in this case  
21 a certain percentage toward ECOSS?

22 A Because that's what was directed by the

1 Commission.

2 MR. JENKINS: Thank you.

3 Nothing further.

4 JUDGE SAINSOT: Thank you.

5 Okay. Can we excuse Dr. Hemphill?

6 MR. RIPPPIE: (Nonverbal response.)

7 JUDGE SAINSOT: Okay. You are excused formally  
8 now, Dr. Hemphill. Thank you.

9 All right. Can we talk lunch here?

10 (Discussion off the record.)

11 (Whereupon, a luncheon

12 recess was taken to resume

13 at 1:30 p.m.)

14 JUDGE DOLAN: Before we proceed with our next  
15 witness, though, we're going to let Mr. Cooke  
16 introduce his exhibits into the record and then we're  
17 going to proceed from there.

18 Okay. Mr. Cooke.

19 MR. COOKE: Thank you.

20 I would like to introduce into  
21 evidence the direct testimony of Dwight D. Etheridge  
22 and the associated exhibits filed on November 19th

1 and marked as Exhibits DOE 1.0 to 1.5; the direct  
2 testimony of Kirk B. Patterson and the associated  
3 exhibits also filed on November 19th, DOE Exhibits  
4 2.0 to 2.8; the rebuttal testimony of Dwight  
5 Etheridge filed on December 30th, marked as DOE  
6 Exhibit 3.0 and the rebuttal testimony of Kirk  
7 Patterson also filed on December 30th marked as DOE  
8 Exhibit 4.0 and I have affidavits from both  
9 Mr. Etheridge and Mr. Patterson testifying that the  
10 documents were prepared under their direction or by  
11 them and that if the same questions were asked today,  
12 their responses would be the same.

13 JUDGE DOLAN: Any objection?

14 MR. BERNET: No objection.

15 JUDGE DOLAN: Okay. Then DOE Exhibits 1.0  
16 through 1.5, DOE Exhibit 2.0 through 2.8, DOE 3.0 and  
17 DOE 4.0 will be admitted into the record.

18 Thank you.

19

20

21

22

1                   (Whereupon, DOE  
2                   Exhibits 1.0 through 1.5,  
3                   DOE Exhibit 2.0 through 2.8,  
4                   DOE 3.0 and DOE 4.0 were  
5                   admitted into evidence)

6                   All right. Just somewhat as a  
7                   housekeeping matter, Judge Sainsot and I, just for  
8                   the sake of trying to keep the hearings moving along  
9                   a little bit, we're going to not take an afternoon  
10                  break, we're going to try to just -- each judge take  
11                  an individual break to keep the hearings moving. If  
12                  anybody feels that a break is necessary, please  
13                  advise us and we'll probably grant that request, but  
14                  we've got to try to make up some time here,  
15                  especially if we're going to be crunched on our  
16                  overtime. So if we could, let's go ahead and start  
17                  with the next witness, please.

18                  MR. BERNET: ComEd calls Michael McMahan.

19                                 Mr. McMahan, can you state your name  
20                                 and spell it for the record, please.

21                                 THE WITNESS: Michael D. McMahan,  
22                                 M-c-M-a-h-a-n.

1 (Witness sworn.)

2 MICHAEL McMAHAN,

3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. BERNET:

8 Q Mr. McMahan, do you have before you what's  
9 been previously marked as ComEd Exhibit 9.0 revised?

10 A I do.

11 Q ComEd Exhibit 33 and ComEd Exhibit 9.0 in  
12 addition to ComEd Exhibit 9.1, ComEd Exhibit 33 and  
13 ComEd Exhibits 60 with Attachments 60.1, 2, 3, 4 and  
14 5.

15 Do you have those before you?

16 A I do.

17 Q And are those documents, the direct,  
18 rebuttal and surrebuttal testimony that you prepared  
19 or were prepared under your direction for submission  
20 to the Commission in this proceeding?

21 A That's correct.

22 Q And if I were to ask you the same questions

1 set forth in those documents, would your answers be  
2 the same?

3 A They would.

4 Q Is there anything in those documents that  
5 you need to change?

6 A No.

7 MR. BERNET: Just for the record, the original  
8 Exhibit 9.0 was filed on June 30th, 2010, the revised  
9 9.0 was filed on October 19th, 2010, and the rebuttal  
10 testimony, which contains public and confidential  
11 versions, was filed on November 22nd, 2010, and the  
12 surrebuttal testimony, which also contains public and  
13 confidential versions, was filed on  
14 January 3rd, 2011, and that includes ComEd  
15 Exhibits 60.0 through 60.5. And with that, ComEd  
16 moves for admission of Exhibits 9.0 revised, 9.1, 33,  
17 60, 60.1 through 5.

18 JUDGE SAINOT: Any objection?

19 (No response.)

20 Hearing none, your motion is granted.

21

22

1                   (Whereupon, ComEd Exhibits  
2                   9.0 revised, 9.1, 33, 60,  
3                   60.1 through 5 were  
4                   admitted into evidence as  
5                   of this date.)

6           MR. BERNET: I tender the witness for cross.

7           JUDGE DOLAN: According to what I'm looking at,  
8 we have the AG and AARP and don't see either one of  
9 those attorneys in the room.

10          JUDGE SAINCOT: Well, Staff, too, I think.

11          MR. BERNET: No Staff.

12          JUDGE DOLAN: Great.

13          MR. BERNET: I guess to save time, I could put  
14 Mr. Donnelly on just to get his exhibits admitted.

15          JUDGE SAINCOT: All right. Why don't we do  
16 that.

17          MR. BERNET: All right. Mr. McMahan, you can  
18 step down for a minute.

19                   ComEd calls Terry Donnelly.

20          JUDGE DOLAN: Mr. Donnelly, raise your right  
21 hand.

22

1 (Witness sworn.)

2 TERENCE R. DONNELLY,

3 called as a witness herein, having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. BERNET:

8 Q Mr. Donnelly, can you state your name and  
9 spell it for the record, please.

10 A Terence R. Donnelly, T-e-r-e-n-c-e,  
11 Donnelly, D-o-n-n-e-l-l-y.

12 Q And do you have before you what's been  
13 previously marked as ComEd Exhibit 8.0, 8.1, 8.2 and  
14 8.3 revised and ComEd Exhibit 20 revised and ComEd  
15 Exhibit 20.1 revised and ComEd Exhibit 32 revised,  
16 32.2 -- 32.1, 32.2 corrected and 32.3 and 32.4 and  
17 ComEd Exhibit 58 revised and 58.1 through 58.6 -- I'm  
18 sorry -- 58.10.

19 Do you have those documents before  
20 you?

21 A I do.

22 Q And is that the -- do those documents

1 constitute the direct, supplemental direct, rebuttal  
2 and surrebuttal testimony that you prepared or was  
3 prepared at your direction in this proceeding?

4 A Yes, it does.

5 Q And if I were to ask you the questions set  
6 forth in those documents today, would your answers be  
7 the same?

8 A Correct. Yes.

9 Q Do you have anything to correct or modify  
10 in those documents?

11 A No.

12 MR. BERNET: And just so the record is clear,  
13 we filed -- we filed, I guess, revised surrebuttal  
14 yesterday and the correction was to correct an  
15 exhibit number, 58.1, I believe, and also to correct  
16 a -- to -- in Exhibit 58.1, there was a second page  
17 that was a copy of a spreadsheet which you couldn't  
18 read and so we got the larger version so you can read  
19 it so that's what was filed yesterday.

20 And with that I move for the admission  
21 of ComEd Exhibit 8.0, 8.1 through 8.3 revised, 20.0  
22 revised, 20.1 revised, 32.0 revised with Attachments

1 32.1, 32.2 corrected, 32.3, 32.4 revised and  
2 Exhibits 58.0 revised and 58.1 revised and 58.2  
3 through 58.10.

4 JUDGE SAINSOT: Any objection?

5 (No response.)

6 Okay. Hearing none, your motion is  
7 granted. Thank you.

8 (Whereupon, ComEd Exhibit 8.0,  
9 8.1 through 8.3 revised, 20.0 revised,  
10 20.1 revised, 32.0 revised with  
11 Attachments 32.1, 32.2 corrected,  
12 32.3, 32.4 revised and Exhibits 58.0  
13 revised and 58.1 revised and 58.2  
14 through 58.10 were  
15 admitted into evidence as  
16 of this date.)

17 MR. BERNET: Thank you. You can step down.

18 MS. MUNSCHE: Mr. Smith is available if we want  
19 to get started with him since the Attorney General is  
20 not here.

21 JUDGE SAINSOT: Well, I'm not sure. Isn't that  
22 an AG witness?

1 JUDGE DOLAN: No, it's a CUB witness.

2 JUDGE SAINSBOT: Oh, it's a CUB witness.

3 MS. MUNSCH: It's cosponsored, but we were  
4 going to present him. Whatever is easiest.

5 MR. BERNET: We might as well keep moving.

6 JUDGE DOLAN: Are we still looking at an hour  
7 and 45 for Mr. Donnelly?

8 MR. BERNET: (Nonverbal response.)

9 MR. DOLAN: Then we could just get Mr. Smith  
10 going.

11 MR. BERNET: I see Miss Lusson just got here.

12 JUDGE DOLAN: All right. Miss Lusson, are you  
13 still planning on examining Mr. McMahan?

14 MS. LUSSON: Yes, I am. I apologize.

15 JUDGE DOLAN: All right. His testimony has  
16 already been introduced into the record, so we're  
17 ready for you to proceed.

18 JUDGE SAINSBOT: We already swore him in, too.

19 CROSS-EXAMINATION

20 BY

21 MS. LUSSON:

22 Q Good afternoon, Mr. McMahan. My name is

1 Karen Lusson from the Attorney General's Office.

2 Now, as I understand your testimony,  
3 you are here testifying about the use and usefulness  
4 of certain projects that were included in the  
5 Company's rate base in the -- this docket; is that  
6 correct?

7 A That's correct.

8 Q And these would -- would it be fair to  
9 describe them as the larger rate base additions since  
10 the Company's last rate case?

11 A That's correct.

12 Q With respect to the Company's Northwest  
13 Reliability Project, if you could turn to Page 17 of  
14 your direct testimony.

15 A Okay.

16 Q Now, as I understand, this project is in  
17 the final phase of a multiyear project to reenforce  
18 ComEd's system in the northwest suburbs; is that  
19 correct?

20 A That's correct.

21 Q And you state that this has been -- that  
22 there's been significant commercial and residential

1 development since the late 1980s when ComEd was no  
2 longer capable of reliably supporting the region.

3 When you say "no longer capable of  
4 reliably --

5 MR. BERNET: I'm sorry, Counsel, do you have a  
6 line number for Mr. McMahan?

7 MS. LUSSON: I'm sorry. 352, 353.

8 BY MS. LUSSON:

9 Q Do you see that?

10 A Yep.

11 Q And when you state "reliably supporting the  
12 region," are you referring to the Company's ability  
13 to support increased customer demand in that area?

14 A Yes.

15 Q And isn't -- is the increased usage in the  
16 area associated with new customers, existing  
17 customers or both?

18 A Well, the actual answer is both. We've  
19 seen existing customers have increased usage as they  
20 bring on flat screen TVs, et cetera, but that area  
21 has had enormous new growth as well. All's you have  
22 to do is drive up Highway 47 and you'll see it on

1 both sides.

2 Q Okay. And is it any particular customer  
3 classes or across the board?

4 A It is both residential and commercial  
5 industrial development.

6 Q And -- so when the Company made the  
7 decision to make this investment, was it concluded by  
8 system planners and engineers that the existing  
9 facilities were unable to support the demand from  
10 customers in that area supported by those -- the  
11 existing facilities?

12 A Yeah, through our planning criteria, that's  
13 correct.

14 Q And when the Company made that  
15 determination, was the Company concerned that the  
16 existing facilities would not be able to serve summer  
17 peak load?

18 A Our criteria is a 1 in 10-year planning  
19 criteria, so that's the -- that is commonly referred  
20 to as summer peak load, but it's a 1 in 10-year  
21 planning criteria.

22 Q And when you say "1 in 10-year," are you

1 saying 1 i-n 10-year?

2 A It's the hottest summer in the last 10  
3 years, so it's a highest load you can expect in the  
4 next -- in a 10-year period.

5 Q Okay. And when the Company is looking to  
6 make that investment and exploring the alternatives  
7 because, as I understand it, when the Company --  
8 before it makes a decision to invest -- make these  
9 significant new investments, it also explores other  
10 alternatives that might be constructed to meet the  
11 customer demand; is that right?

12 A That's correct.

13 Q And when the Company engineers and  
14 facilities planners are weighing the need to add  
15 facilities, do they study usage to determine the  
16 usage and peak needs of the customers in those areas?

17 A Well, it's more of a -- it's more of an  
18 area plan or a terminal plan rather than individual  
19 customers. So you take the -- you take what you  
20 expect to have load on individual feeders and you  
21 also take the load of the terminal or the substation.

22 Q And so in terms of --

1           A     The aggregate load.

2           Q     It's an aggregate load, okay.

3                     So then when you say "aggregate load,"  
4     it would be looking at all of the usage that all of  
5     the customers using those, for example, feeders, as  
6     you said, would be imposing on the system?

7           A     That's correct.

8           Q     And how often does the Company revisit the  
9     examination of that customer load on certain  
10    facilities?

11           MR. BERNET:   Can we have clarification?   Are  
12    you talking about in connection with this particular  
13    project or are you talking about generally?

14           MS. LUSSON:   Generally speaking.

15           THE WITNESS:   Annually.

16    BY MS. LUSSON:

17           Q     Annually, okay.

18                     And is that true for this particular  
19    project?

20           A     Right.

21           Q     And is that done pre summer?   Post summer?

22    Is there a certain time of year that the Company

1 examines the load?

2           A     Yeah, we typically -- our planning  
3 criteria, we typically investigate and do our area  
4 plans 18 months in advance. We establish nets based  
5 upon both actual load and forecasted load and then as  
6 you walk into the current -- the year before, the  
7 year before, we do a post-summer analysis right  
8 before we go into the year to see if that load is  
9 actually materialized in accordance with our  
10 forecast.

11                         So the answer is both.

12           Q     And, again, in particular, focusing on this  
13 project, you mentioned that a -- the West Rutland  
14 Substation was built as a part of that project; is  
15 that correct?

16           A     As a part of what project?

17           Q     The West -- the Northwest Reliability  
18 Project?

19           A     Correct.

20           Q     And can you briefly provide for the record  
21 a discussion of -- a brief discussion of what exactly  
22 a substation does in the distribution network?

1           A     Sure.  The substation -- typical substation  
2     that we design now takes transmission level voltage,  
3     in this case 138,000 volts, that comes from  
4     transmission substations and that breaks it down into  
5     distribution voltage and distributes it to feeders  
6     out to the area.

7           Q     Okay.  And then later on, on Page 18 of  
8     your testimony you mention that the West Rutland  
9     Substation includes 2 40 MVA/12 kV transformers.

10                           Do you see that?

11           A     Right.

12           Q     And can you briefly describe what these  
13     facilities do, the function of this distribution  
14     equipment.

15           A     The transmission level voltage comes in at  
16     138 kV.  It typically goes to a high side bus where  
17     it's fed to the transformers which transform it down  
18     to distribution level voltages, in this case 12,000  
19     volts, 12,000 volts.  Our typical transformers -- or  
20     our standard transformer is 40 MVA.  This station has  
21     an ultimate 4, capability for 4 40 MVA transformers.  
22     At the time, we only needed to install 2 to service

1 the load, that's what we did and then from the 4 MVA  
2 transformers, it goes into a set of breakers where  
3 it's distributed to feeders, the feeders branch out  
4 to serve either commercial, light industrial or  
5 residential customers, typically overhead and in this  
6 region, it is overhead where -- and then you have the  
7 smaller transformers, the ones you see mounted on the  
8 poles, transform 12,000 volts down to household usage  
9 and that's how the voltage gets there.

10 Q And both for those smaller transformers and  
11 the larger transformers, does the Company continue  
12 those annual checks of the aggregate customer usage  
13 that feeds into those facilities?

14 A At the substation level, yes.

15 Q Now, on Page 21 of your testimony, when you  
16 talk about the alternatives that ComEd considered for  
17 purposes of the Northwest Reliability Project, I  
18 think you've indicated that the facility planners and  
19 engineers look at the usage of the customers that are  
20 serviced -- that utilize those facilities in  
21 determining whether or not these possible alternative  
22 facilities would meet the forecasted need of those --

1 usage need of the customers; is that correct?

2 A What line are you referring to?

3 Q Lines 394 through 401.

4 A Yeah, the alternative considered was a 34  
5 kV system and they are just expanding that.

6 Q And so just to sort of restate my question,  
7 when determining whether or not to use the  
8 alternatives, the facilities planners and engineers  
9 look at customer usage to determine -- on those  
10 facilities to determine whether or not these  
11 alternative construction scenarios might also serve  
12 the load; is that correct?

13 A That's correct.

14 Q When you are studying the usage data for  
15 customers that utilize these facilities; that is, the  
16 existing faces that are -- the Company determines  
17 need to be somehow expanded, does the Company look at  
18 both the peak and off-peak usage of the customers or  
19 the loads served by these facilities?

20 MR. BERNET: Again, can we get clarification?

21 You are talking about this particular project, Karen,  
22 or are you --

1 MS. LUSSON: I guess for this question we'll  
2 start generally.

3 THE WITNESS: No, in general, the planning  
4 criteria -- the capacity planning criteria is based  
5 on a 1 in 10-year weather year. So you plan for the  
6 worst case in 1 in 10 years in terms of load.

7 BY MS. LUSSON:

8 Q And so there's no examination of, for  
9 example, the relative use of the -- those facilities  
10 at certain other times of the year?

11 A No. Not for this purpose.

12 Q And does that ever occur with any of the  
13 facilities that you discuss in your testimony; that  
14 is, looking at the relative usage, both peak and  
15 off-peak?

16 A That's all 1 in 10-year planning criteria.

17 Q Okay. And I think you indicated that  
18 generally speaking, you are looking at the -- as you  
19 say, the 1 in 10-year peak -- the highest peak?

20 A Mm-hmm.

21 Q Again, state again what the 1 in 10 is  
22 again.

1           A     You would calculate the maximum load we  
2 would expect to see over a 10-year period and it's a  
3 temperature normalize. Temperature typically drives  
4 our load, so using the past 10 years, we make  
5 adjustments in order to arrive at a forecasted 1 in  
6 10-year peak, unless a new actual is set.

7           Q     Okay. And then, again, I think you  
8 indicated that you revisit that examination each year  
9 on those facilities?

10          A     That's correct.

11          Q     And is there any month that typically  
12 stands out as a reliable indicator of what the peak  
13 load will be on area facilities, generally speaking?

14          A     The hottest month.

15          Q     The hottest month?

16          A     It could be anywhere from June, July  
17 August, it could be the first part of September as an  
18 anomaly.

19          Q     So there's no particular month that -- you  
20 know, it's not always we're going to look at August  
21 each year?

22          A     No. No.

1 Q Okay. Now, looking at the Enbridge  
2 Distribution Project on Page 22 --

3 A Okay.

4 Q -- you state, The main reason for the  
5 project was ComEd could not provide service to  
6 Enbridge's proposed load while still maintaining  
7 adequate service to other customers served by the 34  
8 kV system.

9 Do you see that on Line 422?

10 A Yep. Yes.

11 Q So is it correct, then, it was this  
12 particular -- this Enbridge particular customer's  
13 usage that would have rendered the existing  
14 facilities inadequate to serve all of the customers  
15 that utilize those facilities --

16 A Right.

17 Q -- is that right?

18 In the next sentence, at Line 424 you  
19 state, The new transformers and related equipment at  
20 Pontiac TSS 80 and the new 34 kV distribution line  
21 extension provided the needed capacity at the 34 kV  
22 level.

1                   When you state "needed capacity,"  
2     you're talking about the ability to serve customer  
3     usage for that area served by those facilities; is  
4     that right?

5           A     Right.

6           Q     In looking at the West Loop 138 kV Project  
7     and when you state that this system reenforcement --

8           MR. BERNET: I'm sorry, Karen, do you have a  
9     page number there?

10          MS. LUSSON: I'm sorry. Page 24, Line 457.

11       BY MS. LUSSON:

12          Q     You state that this reenforcement project  
13     mitigates the impact of a complete outage of the  
14     Crosby Substation in the northern part of Chicago.  
15     Could you elaborate just briefly on that.

16                   Was there an outage already or was  
17     this more preemptive for the Crosby substation?

18          A     No, this is preemptive. Typically, what  
19     we'd like to do is we'd like to have the transmission  
20     level voltages come into a substation to independent  
21     sources. Crosby, we -- Crosby from Clybourn. In  
22     Ontario, we didn't have that. With the construction

1 of West Loop, we were able to provide redundant  
2 transmission level sources to the substations.

3 Q And the need for redundancy was why?

4 A Well, it's -- it's just standard practice.  
5 It's just good engineering practice to not have all  
6 your eggs in one basket, if you will.

7 Q And -- so this precautionary build was to  
8 ensure that the usage ne- -- usage needs of the  
9 customers served by the facilities in this geographic  
10 area?

11 MR. BERNET: I'm going to object to the  
12 question. It mischaracterizes the testimony.

13 JUDGE SAINSON: Rephrase.

14 BY MS. LUSSON:

15 Q So is it correct that this project was  
16 built to ensure the usage needs of customers served  
17 by facilities in this area?

18 A Correct.

19 Q And then for purposes of project, the part  
20 that was not transmission, as I understand it, was 3,  
21 138 kV lines that were installed as part of the  
22 project and they were distribution facilities?

1           A     Correct.

2           Q     And, again --

3           A     Transmission level voltages were classified  
4 as distribution.

5                           (Change of reporters.)

6 BY MS. LUSSON:

7           Q     And that transmission level voltage was  
8 designed -- or these kV lines were designed to, as  
9 you say -- I think you indicated earlier put the  
10 voltage into a level that reflects what customers  
11 need at the proper level for distribution service,  
12 ordinary distribution service?

13          A     I'm going to say correct on that.

14          Q     Looking at Pages 27 and 28 of your  
15 testimony of your direct, referring to the Dixon  
16 substation. You state these new installations were  
17 required to relieve overload conditions on the 34 kV  
18 terminals, and then you indicate the locations there.

19                           Do you see that?

20          A     Yes.

21          Q     And resolve recurring maintenance  
22 environmental issues associated with existing

1 transformers.

2                   What kind of factors affect the need  
3 for maintenance of these kind of distribution  
4 facilities?

5           A     I'm sorry? What kind of factors?

6           Q     Create a need for -- increase the need for  
7 maintenance of these kind of distribution facilities?

8           A     Well, in this case, it was not necessarily  
9 the increase need, the maintenance needed to perform  
10 more maintenance, but the age of consisting  
11 transformers was the contributor, not the cause.

12                   The need to for the project was driven  
13 by increased load in the area, and they need to  
14 relieve that load by installing larger transformers.

15                   However, these particular transformers  
16 were very old; and as such, they were prone to --  
17 they had some oil leaks associated with them, so we  
18 were able to take advantage of the project to  
19 alleviate that environmental concern, and because of  
20 the age the parts were obsolete or not possible to  
21 obtain.

22           Q     And when you say to prevent in your term

1 overload conditions at Line 507, there again you're  
2 referring to customer usage?

3 A Well, in this particular case, the load  
4 growth was not so much driven by increased customer  
5 load as it was the loss of a co-gen facility.

6 There was a 14-megawatt co-generation  
7 facility as operated by a cement manufacturer, and  
8 they decommissioned that. It was privately owned.

9 So, in this particular case, rather  
10 than adding load, you subtracted supply and that  
11 meant we had to add additional supply to that area to  
12 compensate for that loss of the 14 megawatts.

13 Q Did that increase the load going through  
14 these 34 kV terminals?

15 A Yes.

16 Q So there again the Company was monitoring  
17 load on that equipment for purposes of determining  
18 whether or not it needed to make new installations at  
19 these locations?

20 A Correct.

21 Q Then the Plymouth Court feeders, which  
22 begins on Page 28, that discussion?

1           A     Right.

2           Q     This involved the addition of new 12 kV  
3     cable and new existing underground conduit systems?

4           A     Correct.

5           Q     And that provided capacity to pick up  
6     customer loads supplied by the Plymouth Court  
7     substation if the station were to experience a  
8     failure; is that correct?

9           A     Well, it provided alternative ties to be  
10    able to pick up that load if that station were to  
11    suffer a catastrophic failure.

12          Q     Was this another attempt at creating some  
13    redundancy?

14          A     Yeah, in this particular case, the Plymouth  
15    Court project was not driven so much by capacity  
16    additions as by the need to have some redundancy  
17    built into the system for operational flexibility.

18                    In the case of a highly unlikely, but  
19    possible, loss of the substation.

20          Q     In making that determination, did the  
21    Company examine customer load, usage load in that  
22    area?

1           A     Yes.

2           MS. LUSSON:   Thank you, Mr. McMahon.

3                        No further questions.

4           JUDGE DOLAN:   Thank you.   I guess we will  
5   assume that AARP is waiving cross since Mr. Coffman  
6   did not come back.

7           MS. LUSSON:   It's my understanding that they  
8   are because Mr. Coffman did head back downstate.

9           MR. BERNET:   He's gone?

10          MS. LUSSON:   Yes.   Again, I apologize for my  
11   tardiness.

12          JUDGE DOLAN:   We are going to have to take a  
13   short break to get set up with Mr. Smith.

14                               (Whereupon, a brief  
15                               recess was taken.)

16          JUDGE SAINOT:   Mr. Smith, can you raise your  
17   right hand.

18          THE WITNESS:   Yes.

19                               (Witness sworn.)

20

21

22

1                                   RALPH C. SMITH,  
2   telephonically called as a witness herein, having  
3   been first duly sworn, was examined and testified as  
4   follows:

5                                   DIRECT EXAMINATION

6                                   BY

7                                   MS. HICKS:

8           Q    Good afternoon, Mr. Smith.

9           A    Good afternoon.

10          Q    Could you please state your name, and spell  
11   it for the record.

12          A    Ralph Smith, R-a-l-p-h; Smith, S-m-i-t-h.

13          Q    And what is your business address and  
14   employer?

15          A    15728 Farmington Road,  
16   Livonia, Michigan, 48154. My employer is Larkin &  
17   Associates, PLLC.

18          Q    Thank you.

19                               And do you have before you copies of  
20   what has been marked AG/CUB Exhibit 3.0, 3.1, and 3.2  
21   and 3.3? 3.3 being your affidavit that was presented  
22   on e-docket on October 26th?

1           A     I have all of those, except I don't have  
2     3.3 in front of me.

3           Q     I think that's because you sent the  
4     original of the affidavit to us for filing.

5                     There is one correction I will be  
6     making this afternoon with the agreement of the  
7     Company.

8                     At the time, AG/CUB Exhibit 3.0 was  
9     filed with confidential information, that was  
10    pursuant to a negotiation that it's no longer  
11    confidential. We will be correcting that, but the  
12    substance is exactly the same.

13                    Do you have any other corrections you  
14    need to make to AG/CUB 3.0 at this time?

15           A     Yes, I have one correction on Page 8. It  
16    starts on Line 177 and goes on to Line 178, that has  
17    to do with AG/CUB Exhibit 3.3.

18           Q     And that actually needs to be deleted, I  
19    believe, because 3.3 is actually the affidavit, not  
20    the schedule that's referred to at that point?

21           A     Right.

22                    JUDGE SAINCOT: So the three hard copies that

1 you're going to tender us, can you make that change  
2 on the hard copies.

3 MS. HICKS: Certainly.

4 BY MS. HICKS:

5 Q And do you have before you AG/CUB  
6 Exhibit 9.0, which is your rebuttal testimony on  
7 behalf of the People of the State of Illinois and  
8 Citizens Utility Board, and then we have your  
9 Exhibit 9.1 of your affidavit.

10 Do you have those?

11 A I have 9.0. I do not have the other.

12 Q Do you have any corrections that you would  
13 like to make to your AG/CUB 9.0 at this time?

14 A Yes, I have three corrections to AG/CUB  
15 Exhibit 9.0. The first correction is on Page 4,  
16 Line 81. That line reads --

17 Q Can you hold on a second, Mr. Smith. There  
18 actually was a siren going by, so I have the  
19 correction here, so why don't I read it and then if  
20 you agree with it, that might be easiest for people.

21 Page 4 of Exhibit 9.0, AG/CUB  
22 Exhibit 9.0, Outline 81, it refers to 100 percent and

1 the correction should be "to remove," I believe,  
2 right?

3 A Add the word "and to, comma, to remove."

4 Q Thank you.

5 Do you have any other correction to  
6 make?

7 A Yes, I have two more.

8 The next one is on Page 10, starting  
9 on Lines 210, the first part of the sentence that  
10 starts on Line 210 and goes through 213 should be  
11 stricken, so the sentence should read "for the  
12 reasons described in my direct testimony, comma, the  
13 expense for this plan should be the responsibility of  
14 shareholders."

15 Q Thank you.

16 And your last correction?

17 A The last correction is on Page 29 on Line  
18 639.

19 JUDGE SAINSOT: Line what?

20 JUDGE DOLAN: 639.

21 THE WITNESS: The dollar amount there should be  
22 corrected. The correct dollar amount is 1 million

1 5 thousand 6 hundred 59.

2 JUDGE SAINCOT: So it would be 1,005 -- now  
3 you're dealing with lawyers here, so you have to go  
4 slowly.

5 THE WITNESS: 100,005,659, correct?

6 BY MS. HICKS:

7 Q And with those corrections, if you were  
8 asked the questions contained in AG/CUB Exhibit 3.0  
9 through 3.2 and 9.0, would you give the same answers  
10 today as you did at the time?

11 A Yes.

12 Q And these exhibits were prepared under your  
13 direct supervision or control?

14 A Yes.

15 Q Thank you.

16 MS. HICKS: With that, I move for the admission  
17 of AG/CUB Exhibit 3.0 through 3.3, 3.3 being the  
18 affidavit of Ralph C. Smith and then AG/CUB Exhibit  
19 9.0 and 9.1, 9.1 being the affidavit, into the  
20 record.

21 JUDGE DOLAN: Any objection?

22 MR. RATNASWAMY: No.

1           JUDGE DOLAN:  Then AG/CUB Exhibit 3.0 through  
2   3.3, 3.3 being the affidavit, and AG/CUB Exhibit 9.0,  
3   with 9.1 being the affidavit, will be admitted into  
4   the record.

5                        Thank you.

6           JUDGE SAINSON:  You will mark the changes on  
7   the rebuttal testimony, right?

8           MS. HICKS:  Yes, and we will have clean copies  
9   for distribution this afternoon.

10          JUDGE DOLAN:  Thank you.

11                                (Whereupon, AG/CUB Exhibit  
12                                Nos.  3.0 through 3.3 and 9.0  
13                                through 9.1 were admitted into  
14                                evidence.)

15          MS. HICKS:  Thank you.

16                                With that, the witness is available  
17   for cross.

18                                CROSS EXAMINATION

19                                BY

20                                MR. RATNASWAMY:

21           Q    Mr. Smith, can you hear me?

22           A    I can barely hear you.  Can you speak up.

1           Q     Mr. Smith, my name is John Ratnaswamy. I'm  
2 one of the attorneys for Commonwealth Edison Company.

3                     Good afternoon.

4           A     Good afternoon.

5           Q     Did you propose an adjustment to pension  
6 expense?

7           A     Yes.

8           Q     And sometimes in your testimony you use a  
9 little bit longer term, "defined benefit pension  
10 expense." Is that the same thing?

11          A     The majority of the pension expense  
12 adjustment relates to the defined benefit pension, so  
13 they're not identical, but that's the biggest  
14 component of it.

15          Q     All right. So in general I'm going to use  
16 the term, "pension expense."

17                     If you feel a more precise term needs  
18 to be used, then please feel free to indicate that.

19          MS. HICKS: Sir, are you not referring to  
20 specific adjustments that he's making or just the raw  
21 category of adjustments?

22          MR. RATNASWAMY: I will get more specific in a

1 moment.

2 MS. HICKS: Okay

3 BY MR. RATNASWAMY:

4 Q What is something called Other Post  
5 Employment Benefits Expense or O-P-E-B?

6 A Generally, OPEB refers to post employment  
7 healthcare benefits and sometimes there's also  
8 dental, life insurance and vision included in that.  
9 It's not pension. It's a different form of post  
10 retirement benefits.

11 Q All right. So is it correct that using the  
12 term broadly, you proposed three adjustments related  
13 to pension expense, but you propose no adjustment  
14 related to OPEB expense?

15 A That's correct.

16 Q Okay. If you look at your direct, Page 28,  
17 Lines 16 through 21 please.

18 A Yes.

19 Q Okay. Is it correct that what ComEd has  
20 proposed is to base the pension expense amount in its  
21 revenue requirement on the sum of two things; the  
22 first of those being the 2009-test year level, and

1 the second being the amount of a pro forma adjustment  
2 based on a most recent report of their independent  
3 actuary?

4 A The Company wanted to adjust the test year  
5 level up -- the pension expense by 14.2 million,  
6 which is about a 27.6 percent increase, and we  
7 disagreed with that.

8 We believe the 2009 test year --

9 Q Mr. Smith, I didn't ask you what you agreed  
10 or disagreed with. I just asked you what the Company  
11 proposed.

12 A The Company proposed to increase the  
13 already abnormally high 2009 amount by an additional  
14 14.2 million.

15 Q Okay. Did you understand my question,  
16 Mr. Smith?

17 MS. HICKS: Maybe you could repeat the question.

18 BY MR. RATNASWAMY:

19 Q Well, what I asked him simply was is the  
20 Company's proposal to base pension expense on the sum  
21 of two numbers, the 2009 test year level, plus the  
22 amount of the pro forma adjustment?

1           A     Yes, which is an increase of another  
2     14.2 million.

3           Q     Understood.

4                     And the report on which the pro forma  
5     adjustment is based is from March 2010; is that  
6     right?

7           A     The Company's pro forma amount was based on  
8     an actuarial report. I don't remember the exact date  
9     of it, but it was after the end of the 2009 test  
10    year.

11          Q     Would it be correct in another simpler way  
12    to put the Company's proposal is that they're using a  
13    2010 level?

14          A     That would be a very simple way of looking  
15    at it, but the 2009 and 2010 levels are way larger  
16    than the previous years.

17                 MR. RATNASWAMY: I move to strike the last  
18    sentence of the answer. I simply asked whether it  
19    was a correct characterization of the Company's  
20    proposal.

21                 JUDGE SAINOT: Mr. Smith, just answer the  
22    question please.

1 BY MR. RATNASWAMY:

2 Q Did you review the actuarial report?

3 A I did.

4 Q Does your testimony contain any contention  
5 that there are any errors in the actuarial report?

6 A No.

7 Q As to the Company's position, did the  
8 Company also make a pro forma adjustment for the OPEB  
9 expense based on that same report?

10 A The Company made an adjustment for OPEB  
11 based on an actuary report. I don't recall if it was  
12 the same actuarial report as the pensions.  
13 Typically, they're different reports.

14 Q And you referred to the \$14 million number.  
15 Is it correct the Company's pro forma  
16 adjustment going back to pension expense is  
17 14 million 209 thousand, and you oppose that entire  
18 amount?

19 MS. HICKS: And this is solely the pension  
20 expense, not the OPEB, just to be clear.

21 MR. RATNASWAMY: Right, back on pension  
22 expense.

1 THE WITNESS: Yes. We opposed the post test  
2 year adjustment to pension, and also believe that the  
3 test year recorded amount is also too high and needs  
4 to be adjusted downward.

5 BY MR. RATNASWAMY:

6 Q Now, in your direct on Page 6, Lines 134 to  
7 136, do you have that page in front of you?

8 A Page 6.

9 Q Lines 134 to 136 in your direct?

10 A Yes.

11 Q Is it correct that you propose to -- I'm  
12 just going to read part of No. 3 there, and I  
13 understand there is a No. 1 and No. 2.

14 But as far as the 2009 pension expense  
15 amount that you propose to quote:

16 "Normalized define benefit  
17 pension expense by reducing ComEd's  
18 recorded 2009 amount to an average  
19 that reflects conditions before the  
20 worldwide financial crisis."

21 Right?

22 A Yes.

1 Q And to do that you used a three-year  
2 average; is that right?

3 A I'm just looking back at the detail. I  
4 calculated various averages and as shown on  
5 Schedule C-11.3, which is AG/CUB 3.1, I used a  
6 three-year average of 2006 to 2008. I also looked at  
7 amounts from 2004 through 2009.

8 Q Understood.

9 But the one that you actually used to  
10 calculate your adjustment was a three-year average of  
11 2006, 2007 and 2008; is that right?

12 A Right. It is shown on that schedule. That  
13 was, out of all the averages I looked at, that was  
14 the highest one.

15 Q And that's the one you used?

16 A Yes.

17 Q In the course of deciding which of the  
18 different averages -- periods to use for averaging,  
19 did you review any past positions taken by the  
20 Attorney General's Office or CUB in previous rate  
21 cases about what year should be used when you  
22 normalize an expense?

1 MS. HICKS: Past positions taken by us?

2 MR. RATNASWAMY: By you.

3 MS. HICKS: I don't see how that is relevant  
4 since each proceedings brings its own facts presented  
5 before it.

6 If you're asking about other  
7 Commission final orders, that's fine, but I don't  
8 understand our position from a litigation perspective  
9 from three years ago would have to do with this.

10 MR. RATNASWAMY: That's interesting.

11 He volunteered in the last answer that  
12 he looked at multiple periods, he didn't just look at  
13 one.

14 So, I'm asking him, and I think it's a  
15 fair question, when he looked at deciding which of  
16 those periods to use, did he look at any positions  
17 taken by the Attorney General's office or CUB in past  
18 rate cases about how to pick which years to use.

19 JUDGE SAINSOT: You know, here's what Judge  
20 Dolan and I think, you can ask him that question, but  
21 cut it off there.

22 THE WITNESS: I looked at 2004 through 2009 and

1 looked at the averages of 2004 through 2008, 2005  
2 through 2008, 2006 through 2008. I actually picked  
3 the highest one of those three averages as the basis  
4 for adjustment.

5                   You had asked a data request about  
6 precedent and such, and we responded that that was  
7 AG/CUB 2.54, and we looked at various prior  
8 Commission orders, 07-0242, 07-0566, 07-0585. In  
9 those three, we found no discussion of pension  
10 expense in the orders.

11                   08-0363, in that one a pension expense  
12 credit was among the non-contested issues. We didn't  
13 see reference there made in the order to an actuarial  
14 report.

15                   09-0166, that order on Pages 25 to 37  
16 discussed the removal of the pension asset and rate  
17 base.

18                   And Pages 43 to 44 refer to an  
19 uncontested adjustment for amortization of a  
20 regulatory assets for pension costs.

21                   We didn't see discussion of use of an  
22 actuarial report in the order or in the Commission's

1 conclusion in that order.

2 We also looked at 09-0306, that order  
3 is on Pages 85 through 90 discuss pension expense.

4 Utilities' proposal to update pension  
5 expense beyond the chosen test year to incorporate an  
6 increase in the pension expense --

7 MR. RATNASWAMY: Your Honors, I'm sorry. This  
8 has gone very long and it's nowhere close to being a  
9 response to my question.

10 My question simply was, did he look at  
11 AG/CUB positions in other rate cases on how you  
12 figure out which years to use normalization periods.  
13 Instead, he's characterizing his response to AG/CUB  
14 Data Request 2.54, which never refers to any  
15 positions taken by AG or CUB.

16 MS. HICKS: I think he's actually trying to be  
17 helpful, and giving what I had said -- if you would  
18 like to ask that question again, that's fine. But I  
19 don't think he was characterizing. He was reading  
20 it, but if you would like to repeat your question.

21 MR. RATNASWAMY: It's a simple question.

22 THE WITNESS: I was giving you prior orders

1       rather than AG/CUB positions for different averages.

2       BY MR. RATNASWAMY:

3               Q     Can you just tell me in deciding which  
4       years to use, did you look at positions taken by AG  
5       or CUB in previous rate cases about how you should  
6       decide which years to use when you normalize an  
7       expense?

8               A     I think we had some general discussions  
9       with counsel about that. The research was primarily  
10      on prior orders as opposed to prior AG testimony or  
11      prior CUB testimony.

12              Q     Okay. Now, setting aside the pro forma  
13      adjustment, and just sticking with the adjustment you  
14      made to the 2009 pension expense, the test year  
15      level, is it correct that your normalization results  
16      in an adjustment of \$22 million, 845 thousand down  
17      from the 2009 level?

18              A     On a jurisdictional expense basis, yes.

19              Q     If you could look at Page 26 of your direct  
20      please.

21                               Lines 557 to 560 please?

22              A     55.

1 Q The sentence actually begins on 555 and  
2 ends on 560.

3 A Okay. I have it.

4 Q All right. Just to make sure we don't get  
5 in a back-and-forth on it. Is it correct that the  
6 reason you give there for normalizing downward the  
7 2009 amount is quote:

8 "The 2009 amount itself is  
9 abnormally high in comparison with  
10 other recent years and reflects a higher  
11 cost due to primarily investment losses  
12 experienced in 2008 as a result of the  
13 investment market decrease at the  
14 outset of the recent severe recession."

15 A Yes.

16 Q Would you agree that not all expenses are  
17 normalized in a rate case?

18 A I would agree with that.

19 Q Okay. And you agree that there is sometimes  
20 a dispute on whether they should be normalized?

21 A This case, it looks like there is a  
22 dispute.

1           Q     Okay.  Is that the first time you  
2 encountered it?

3           A     No.

4           Q     Okay.  Do you agree also there is sometimes  
5 a dispute not only over whether to normalize, but  
6 also how to normalize?

7           A     Well, sometimes the devil is in the detail.

8                     The dispute is whether to normalize  
9 and how the normalization is calculated.  That  
10 appears to be the situation we have here.

11          Q     Okay.  So, when all the evidence is in, and  
12 when the ICC is deciding how to set pension expense  
13 in this case, should it choose whichever proposal is  
14 before it that best reflects what ComEd's pension  
15 expense will be in the period in which the rates  
16 being set are expected to be in effect?

17          A     I think that's one consideration, but  
18 that's certainly not the only one.

19                     I think the Commission has to look at  
20 the level of increase that's occurred and ask is that  
21 reasonable to charge that substantial increase to  
22 ratepayers.

1                   If you say -- I mean, pension is a  
2 form of compensation. If you had wage increases that  
3 were 130 percent or more above the prior year, you  
4 would certainly question that. Just because this is  
5 a different type of compensation, doesn't mean that  
6 it's exempt from scrutiny for reasonableness.

7                   I think the Commission needs to look  
8 at the huge increases that occurred and decide if  
9 that's reasonable.

10           Q       Understood.

11                   But weren't you asked in a data  
12 request whether you were making any contention that  
13 the total compensation paid by ComEd was imprudent or  
14 excessive and didn't you say "no"?

15           MS. HICKS: Do you have a specific request?

16           THE WITNESS: I think we didn't do --

17           MS. HICKS: Hold on a second because I think  
18 counsel is getting it out.

19           MR. RATNASWAMY: 2.52.

20           MS. HICKS: Thank you. So, this is in response  
21 to ComEd Data Request 2.52.

22           THE WITNESS: The question asks from an

1 operational perspective in terms of attracting,  
2 retaining and motivating employees did my testimony  
3 contain any opinion that from that perspective the  
4 total compensation paid by ComEd to its employees,  
5 including base pay and all other compensation  
6 including the incentive comp and benefits is not  
7 prudent or is excessive.

8                   And the response was that we addressed  
9 the issue from a ratemaking perspective, not from an  
10 operational perspective. I didn't use the term "not  
11 prudent" or "excessive."

12                   I do, as is acknowledged in the  
13 response, did recommend several adjustments including  
14 adjustments to incentive compensation, related  
15 expense. And I also pointed out the large increases  
16 in certain aspects of employee compensation; such as,  
17 pensions require a normalization adjustment for  
18 ratemaking purposes.

19 BY MR. RATNASWAMY:

20                   Q     Isn't it true that the first sentence of  
21 your answer to that data response was quote: "No."?

22                   A     Yes, from an operational perspective in

1 terms of attracting, retaining and motivating  
2 employees, which was the question of asked me.

3 Q Okay.

4 A I'm not expressing an opinion on that  
5 aspect of it.

6 Q Do you know of any rate case in Illinois  
7 where pension expense in the revenue requirement was  
8 increased on the theory that the test year pension  
9 expense was abnormally low because of a stock market  
10 boom?

11 MS. HICKS: Any opinion in Illinois ever?

12 MR. RATNASWAMY: Ever.

13 THE WITNESS: I'm unaware of any.

14 BY MR. RATNASWAMY:

15 Q Is it possible for any of the other  
16 expenses in the revenue requirements to be abnormally  
17 low because of the financial crisis to which your  
18 testimony refers?

19 A Be abnormally low?

20 Q Yes.

21 A I'm not aware of any. I suppose it's  
22 possible.

1 Q Okay.

2 A It's possible if the sales level would  
3 adjust, but I really haven't adjusted them.

4 Q Okay. I'm not exactly intending to ask  
5 about it, but you might want to have out your  
6 supplemental response to Data Request 2.54 please?

7 MS. HICKS: Your supplemental?

8 MR. RATNASWAMY: His supplemental response to  
9 our, ComEd, Data Request to AG/CUB 2.54.

10 MS. HICKS: Thank you.

11 BY MR. RATNASWAMY:

12 Q Do you know of any rate case in Illinois  
13 where if the most recent actuarial report was put  
14 into evidence in the last order issued by the  
15 Commission in that case, the Commission rejected use  
16 of the numbers in that report?

17 A Well, it looks to us like the Commission's  
18 decision in 09-0306 rejected a utility proposal to  
19 update pension expense beyond the test year. I'm not  
20 sure what the situation was in terms of the actuarial  
21 report being in evidence or not.

22 Q In that data request response, you refer to

1 the order in that docket. Are you familiar with the  
2 order and the hearing in that docket?

3 A I don't recall if I reviewed the order on  
4 the hearing. I thought I did, but I'm not sure.

5 Q Okay. Were you -- I'm sorry -- I truly  
6 don't know. Were you a witness in that case?

7 A No, I don't think so.

8 MS. HICKS: As far as I know, I was with a  
9 different office at the time, but Mr. Smith was not.

10 BY MR. RATNASWAMY:

11 Q How familiar are you in general with the  
12 issues in that case?

13 A I'm familiar from reading parts of the  
14 order and looking at parts of the testimony.

15 Q So you're familiar with parts, but largely  
16 not the other parts; is that right?

17 A That's true. I didn't participate  
18 directly. I'm familiar with parts, but obviously,  
19 not the whole thing.

20 Q Have financial conditions in the United  
21 States returned to the conditions that existed before  
22 the worldwide financial crisis to which you refer?

1           A     I don't think so.  It looks like the  
2     economy may be getting better, but I don't think we  
3     were back to the boom days as we were, say, in 2007.

4           Q     If you could look at your direct on Page 37  
5     please.  The question begins on Line 825 and the  
6     answer that ends on 833.

7           A     825 to 833?

8           Q     Correct.

9           A     Yes, I am there.

10          Q     Okay.  You refer there -- I'm paraphrasing  
11     of course.  Correct me if I'm wrong.  The decline of  
12     pension plans and a discernible trend away from such  
13     plans, what do you mean by "a decline or trend"?

14          MS. HICKS:  Define "benefit pension plans," just  
15     to be specific.

16          MR. RATNASWAMY:  That's actually a very  
17     important point.  Thank you.

18     BY MR. RATNASWAMY:

19          Q     A decline or a trend away from them, what  
20     do you mean by "a decline" or "a trend away"?

21          A     The fact that fewer and fewer companies are  
22     using defined benefit pension plans, and that's even

1 a trend that's been adopted, at least in part at  
2 Exelon and ComEd, when their defined benefit plan was  
3 frozen to new employees, effective January 1, 2001.

4 But what I'm referring to there is  
5 several reports by the General Accounting Office that  
6 describe the decline in the number of customer  
7 companies that used defined benefit pension plans.

8 Q When you talk in the next sentence about  
9 reforms to pension plans that would reduce costs, do  
10 you really mean getting rid of defined benefit  
11 pension plans or do you mean that and something else?

12 Could you elaborate?

13 A Yes.

14 Management controls two important  
15 aspects that can significantly influence pension  
16 costs and this, of course, would apply to all the  
17 non-bargaining plans. For the union base, obviously,  
18 we would take union negotiations.

19 So, I'm not at all referring to  
20 getting rid of retirement benefits, but a lot of  
21 companies have realized that they can provide  
22 retirement benefits that employees are very happy

1 with and provide those in a somewhat different form;  
2 such as, defined contribution plans or cash balance  
3 plans, and that eliminates the extreme volatility to  
4 the annual net periodic pension benefit cost that is  
5 associated with defined benefit plans.

6 And the other aspect that management  
7 can heavily influence the cost of the net periodic  
8 benefit cost is by the level of funding that they  
9 decide to utilize in this plan.

10 Typically, the funding in any  
11 particular year can range from the mandated minimum  
12 funding requirement, which in many years ends up  
13 being zero to a maximum tax deductible contribution,  
14 which in many instances can be hundreds of millions  
15 of dollars that can be used to fund these plans and  
16 still provide a tax deduction for the funding  
17 contribution.

18 So both of those considerations have a  
19 tremendous impact on the annual level of pension  
20 costs and both are largely within the control and  
21 influence of company management.

22 Q Okay. Have you concluded your answer?

1           A     Yes.

2           Q     Okay.  Are you familiar with -- do you know  
3     when -- assuming the schedule in this case doesn't  
4     change, when approximately the rates that will be set  
5     in this case will go into effect?

6           A     I believe I've seen that.  I think it's  
7     sometime around May of 2011.

8           Q     All right.  Could you move on to your  
9     rebuttal testimony, Page 25, please, the second full  
10    question and answer on that page?

11          A     Yes.

12          MS. HICKS:  Beginning Line 45 then.

13          MR. RATNASWAMY:  Right.

14          THE WITNESS:  I'm there.

15    BY MR. RATNASWAMY:

16          Q     How did you derive this information?

17          A     From review of orders and from, I think a  
18    few people did research and chipped in, chipped in  
19    with this information.

20          MS. HICKS:  Can I ask you what information  
21    you're referring, to the answer in general?  It makes  
22    a specific reference to Staff testimony, but I'm on a

1 different page.

2 MR. RATNASWAMY: I'm on the rebuttal, Page 25.

3 MS. HICKS: That's where I thought I was.

4 I'm sorry, John.

5 THE WITNESS: It's primarily from my review of  
6 the orders and from other people on our team who had  
7 participated in those particular proceedings,  
8 including the AG and CUB attorney.

9 BY MR. RATNASWAMY:

10 Q Okay. I will represent to you that there  
11 are some names missing from this answer; for example,  
12 in the Ameren case, the Company -- and it's  
13 referenced in the order on Page 137 had a capital  
14 structure witness, Mr. O'Brien. So may I take it,  
15 you didn't read the whole order?

16 A I don't think I read the whole order. We  
17 read portions. We were trying to identify capital  
18 structure and ROE witnesses in each of these rate  
19 cases. It's possible we missed something.

20 Q All right. So I don't want to belabor it.

21 A We didn't spend a huge amount of time on  
22 it, but we did do some research and see what the

1 normal practice had been.

2 Q Okay. So?

3 A We referenced the orders, so the orders  
4 speak for themselves. If we inadvertently left  
5 something out, it wasn't intentional.

6 Q Okay. So I don't want to go through other  
7 examples. Given that you didn't review the whole  
8 order in each of these dockets, is it fair to say you  
9 wouldn't be surprised if there were some other  
10 witnesses besides Mr. O'Brien that you missed?

11 A It's possible we missed some other  
12 witnesses, but we did try to identify who the  
13 utilities ROE- and cost-of-capital witnesses were,  
14 and it was primarily done from reading the orders.

15 But I -- you know, it's possible that  
16 there might be other witnesses that we just didn't  
17 include here, and that was not intentional. We  
18 intended this to be an accurate summary. We  
19 reference the orders so anybody can check back and  
20 come to their own conclusion.

21 Q Okay. Did you understand sometimes the  
22 orders, when they discuss an issue, don't name all

1 the witnesses, right?

2 A Yeah, that's true. I mean, I think they  
3 usually name the witnesses up front, but sometimes  
4 when they're discussing an issue, they only discuss  
5 issues that are being contested, at least that's what  
6 the majority of the focus seems to be on.

7 Q Because we got to Data Request 2.53 or  
8 2.52. There is a parallel Data Request 2.53 about  
9 incentive compensation that you answered.

10 Do you have that?

11 A 2.53?

12 Q Yes.

13 A Yes, that was another question asking about  
14 from an operational perspective.

15 Q I will paraphrase it, if you want.

16 In brief, is it correct that you were  
17 asked whether your testimony contained any opinion  
18 about whether from an operational perspective ComEd's  
19 incentive compensation programs are imprudent -- or  
20 not imprudent -- or excessive and that the first  
21 sentence of your answer was "No"?

22 A Yeah, the question basically asks from an

1 operational perspective in terms of attracting,  
2 retaining and motivating employees, did my testimony  
3 contain any opinion that ComEd's incentive  
4 compensation programs are not prudent or are  
5 excessive, and it says "No," and then has a lengthy  
6 explanation about what was discussed in the  
7 testimony. But I didn't evaluate them from an  
8 operational perspective. I evaluated them from a  
9 ratemaking perspective.

10 Q I'm going to ask you if you agree with a  
11 statement, and it's not a statement you made, it's a  
12 statement somebody else made, but I would like to  
13 know if you agree with it.

14 MS. HICKS: Someone else in this case?

15 MR. RATNASWAMY: Someone in this case;  
16 although, they didn't make the statement in this  
17 case.

18 MS. HICKS: Is it another comment --

19 MR. RATNASWAMY: Actually, it's Mr. Efron in  
20 another case.

21 MS. HICKS: Go right ahead please.

22 BY MR. RATNASWAMY:

1           Q     Here's the statement he made. You tell me  
2 if you agree with it: "If the incentive component of  
3 employee compensation increased automatically with  
4 base wage rates, it would not be incentive  
5 compensation, but rather would be an element of base  
6 wages." That's the end of the quote.

7           A     Yeah, I think I would generally agree with  
8 that.

9           Q     So I want to give you some hypotheticals.  
10                    So suppose incentive  
11 compensation -- in all these, assume it's a utility  
12 and utility's employees.

13                    Suppose incentive compensation was  
14 simply defined as 5 percent of base pay, and when you  
15 add it together the base pay and incentive  
16 compensation and all the other employee compensation,  
17 whatever it is, that the total was at the median  
18 level of what employees are paid by comparable  
19 utilities. That's my hypothetical there.

20                    In that hypothetical, did anything  
21 strike you from a ratemaking perspective as  
22 warranting a disallowance of the incentive

1 compensation?

2 A Could you repeat the hypothetical.

3 Q Sure.

4 So instead of compensation defined  
5 simply as 5 percent of base pay and when you add  
6 together base pay, incentive compensation, and all  
7 the other employee benefits is the total at the  
8 median level for comparable utilities for what they  
9 pay?

10 A If those were the only facts to be  
11 considered, there might be concern about the  
12 incentive comp representing an additional wage  
13 increase.

14 Q Did you conclude your answer?

15 A Yes.

16 Q Assume the hypothetical with this change,  
17 instead of incentive pay being 5 percent of base pay,  
18 suppose it's based on a reliability metric, let's  
19 say, KD, something like that, and the target payout  
20 is 5 percent of base pay. So, again, total  
21 compensation is the same, but I changed the metric  
22 for the plan to being reliability.

1                   Does anything in that hypothetical  
2     from a ratemaking perspective suggest to you a  
3     disallowance of the incentive compensation cost?

4           A     If those were the only facts, I'm not sure  
5     there would be a disallowance or not.

6                   If the KD-based goal is something that  
7     the employees are supposed to be doing anyway as part  
8     of their normal duties, I guess one could question  
9     why they need extra incentive compensation in order  
10    to accomplish something. That should be part of  
11    their normal job responsibility.

12           Q     If ComEd's reliability has improved from a  
13    lower core tile compared to other utilities to a  
14    higher core tile, all else being equal, would that be  
15    a good thing?

16           MS. HICKS: All else being equal, your prior  
17    hypothetical?

18    BY MR. RATNASWAMY:

19           Q     Just in general. I want to make sure  
20    whether increased reliability is a good thing?

21           A     In general, it probably is, yes.

22           Q     Okay. So assume again the same

1 hypothetical except the metric for the incentive plan  
2 is cost control. Does anything about that suggest to  
3 you that from a ratemaking perspective there would be  
4 a disallowance from the compensation cost?

5 A Well, cost control benefits, there is some  
6 benefits to ratepayers from that in that it helps  
7 hold down rates. There is also benefits to  
8 shareholders because the cost control that is  
9 achieved between rate reviews, then that's to the  
10 benefit of shareholders in the form of higher  
11 earnings.

12 So if it's incentive-based cost  
13 control, then it benefits shareholders in the years  
14 between rate cases, and then is finally captured and  
15 recognized for the benefit of ratepayers when there  
16 is a rate case.

17 Q Did you conclude your answer?

18 A Yes.

19 Q What is your understanding, if any, about  
20 whether ComEd still has any earnings per share base  
21 metrics in its incentive compensation plan?

22 A My understanding is that ComEd has

1 attempted to restructure its annual incentive-based  
2 compensation plan to try to tie it to the key  
3 performance measures. But it still contains some  
4 features; such as, a net income limiter. It's  
5 subject to revision, and it's subject to a  
6 significant event curtailment. And also the funding  
7 for 2010 has been set at 50 percent versus  
8 100 percent in 2009.

9                   So the Company, I think, is  
10 essentially trying to do some face dressing on the  
11 way its annual incentive program is presented in  
12 order to avoid shareholders having to bear any  
13 responsibility for a portion of the cost of that  
14 program.

15               MR. RATNASWAMY: I move to strike the whole  
16 answer. The question was: Is there still an  
17 earnings per share metric in there.

18                   I think he knows from what he has  
19 reviewed, it hasn't been in there for five years. So  
20 I think I deserve a fair answer.

21               MS. HICKS: The question is what is your  
22 understanding, if any. The witness is explaining his

1 understanding. Counsel is free to disagree with that  
2 understanding and I'm sure he will ask him questions  
3 whether it's accurate.

4 THE WITNESS: It's my understanding that I  
5 think it was in the 2005 case that a portion of  
6 ComEd's annual incentive plan compensation was  
7 disallowed and the order pointed to an earnings per  
8 share trigger.

9 The Company has removed that, but the  
10 current annual incentive program structure contains  
11 some other aspects to it which can provide  
12 limitations on the payout and some of those continue  
13 to be tied to that income.

14 MR. RATNASWAMY: That was not even a response  
15 to a question, your Honors. I mean, I made an  
16 objection.

17 JUDGE SAINSOT: I think you can solve the  
18 problem here by asking more direct questions subject  
19 for now, rather than open-ended questions.

20 So his answer will be stricken, but we  
21 can move on gracefully, if you ask more traditionally  
22 cross-examining kinds of questions.

1 BY MR. RATNASWAMY:

2 Q If you could look at your direct testimony  
3 at Page 15 please.

4 A Yes.

5 Q All right. You refer there to Line 287, you  
6 refer to Attachment 2 to ComEd's response to AG Data  
7 Request 6.20.

8 Do you see that?

9 A Yes.

10 Q And I believe that data request response,  
11 or at least part of it, is in AG/CUB Exhibit 3.2 on I  
12 think Page 24.

13 Do you have that?

14 A AG, 3.2 Page 24?

15 Q Yes.

16 A Yes, I have that.

17 Q Just to try to speed it up a little bit, so  
18 in your direct on Page 15 and 16, you refer to two  
19 changes made by ComEd to the annual incentive plan;  
20 is that correct?

21 A Well, I think the two changes -- the first  
22 change I think is describing an Exelon plan; in other

1 words, it says if Exelon achieves its earnings per  
2 share and keep performance indicator goals, the AIP  
3 plan will pay out at 50 percent of target compared to  
4 100 percent today.

5 Then down further, it says: The ComEd  
6 plan, while not tied to EPS, will operate in similar  
7 fashion and pay out at 50 percent of target upon  
8 achievement of its business plan.

9 Q Is it correct that those changes are  
10 changes to the 2010 annual incentive plan for which  
11 employees will be paid in early 2011?

12 A Yes, this describes 2010 AIP payouts  
13 payable in February of 2011.

14 Q Okay. Is it correct that in ComEd's  
15 calculation in its revenue requirement it included  
16 the 2010 incentive compensation levels if the program  
17 paid out at target?

18 A I'm not sure if that's clear or not because  
19 there were limitations on target, and it didn't seem  
20 like those were reflected.

21 Q Okay. Let me go back to your direct on  
22 Pages 13 to 14. I just want to confirm what I think

1 you're saying here on one point.

2 Is it correct that the net income  
3 limiter to which you refer only limits payouts of  
4 incentive compensation in the above plan?

5 A There's a chart on the top of Page 14 that  
6 describes -- provides the Company's illustration on  
7 how the net income limiter works.

8 Q Okay. If I could direct your attention to  
9 the sentence that begins on Line 268 of your direct,  
10 is it correct that that sentence itself indicates the  
11 net income limiter applies to payouts above plan?

12 A Yes.

13 MR. RATNASWAMY: I have no further questions.  
14 Thank you, Mr. Smith.

15 JUDGE SAINCOT: And you have redirect, of  
16 course, but also are we going to get the physical  
17 copies?

18 MS. HICKS: Yes.

19 (Whereupon, there was  
20 a change in reporter.)

21

22

1           JUDGE SAINSON: Well, I have one question for  
2 Mr. Smith.

3                   EXAMINATION

4                   BY

5                   JUDGE SAINSON:

6           Q     I don't recall seeing this in your  
7 testimony. It may have been in your testimony. This  
8 is Judge Sainson.

9                   Could you define the term  
10 "normalizing"? And I apologize if I'm just not  
11 recalling what it is.

12           A     Yeah. Normalizing, I think I -- I used it  
13 in two different -- a couple different situations in  
14 my testimony.

15                   Basically, it involves typically  
16 looking at averages of actual costs and determining a  
17 normal level of expense. I've applied that in the --  
18 the defined benefit pension expense area. I also  
19 applied it to one of the miscellaneous expenses --

20           Q     Did you say Lithuanian?

21           A     Miscellaneous.

22           Q     Miscellaneous. Oh, I'm so glad to hear

1 that.

2 A Yeah, I applied a normalization treatment  
3 to one of the miscellaneous expenses that are part of  
4 AG/CUB Adjustment C-13, specifically for retention  
5 awards where the test year recorded amount was in  
6 excess of the total amount for the previous three  
7 years.

8 Q I just needed to know a definition.

9 Thank you, Mr. Smith.

10 A Okay. I just would like to say that I also  
11 have discussion of normalization in my direct and  
12 rebuttal testimony in the context of rate case  
13 expense.

14 The normalization idea there is that  
15 rate case expense is treated as any other O- --  
16 operating and maintenance expense; that it's not  
17 singled out for special regulatory treatment. And  
18 the normalization treatment would basically involve  
19 the Company recording that as an expense on its books  
20 when it's incurred as opposed to capitalizing it in  
21 an asset account and then amortizing it over some  
22 future period.

1 JUDGE SAINCOT: Okay. Thank you, Mr. Smith.  
2 THE WITNESS: You're welcome.  
3 MS. MUNSCH: We don't have any redirect, your  
4 Honors, or --  
5 JUDGE DOLAN: Okay.  
6 MS. MUNSCH: So, Mr. Smith, I think we're done  
7 unless...  
8 JUDGE DOLAN: Okay. All right.  
9 Thank you, Mr. Smith.  
10 THE WITNESS: Okay. Thank you for  
11 accommodating me by phone.  
12 JUDGE DOLAN: No problem.  
13 (Discussion off the record.)  
14 JUDGE DOLAN: Go back on the record.  
15 MR. BERNET: ComEd recalls Mr. Donnelly, who's  
16 already been sworn, and tender him for  
17 cross-examination.  
18 JUDGE DOLAN: Okay. Mr. Borovik, you ready?  
19 MR. BOROVIK: Yes, I am.  
20 Thank you, your Honor.  
21  
22

1 CROSS-EXAMINATION

2 BY

3 MR. BOROVIK:

4 Q Good afternoon, Mr. Donnelly. I'm  
5 Michael Borovik. I represent the People of the State  
6 of Illinois, and I have some questions for you.

7 If you could turn to your surrebuttal,  
8 Page 5.

9 A Okay.

10 Q At Lines 92 to 93, you refer to AG/CUB  
11 Witness Efron's proposed adjustments as being based  
12 on a simplistic mathematical exercise; is that  
13 correct?

14 A Yes.

15 Q Isn't it correct that in ComEd's direct  
16 case -- well, I'm going to be referring to actually a  
17 schedule of Mr. Efron's. You could either accept it  
18 or not accept it, subject to check, or I could  
19 provide the schedule for you --

20 MR. BERNET: Yeah, would you do that? Do you  
21 have an extra copy?

22 MR. BOROVIK: You know, I have only one extra

1 copy.

2 MR. BERNET: Which schedule is it?

3 MR. BOROVIK: It's -- I'm going to first cite  
4 to you Effron's direct testimony. It's DJE 1.1,  
5 Page 2 of 18.

6 MR. BERNET: Terry, that's what I just gave  
7 you.

8 MR. BOROVIK: And then in just a minute --

9 THE WITNESS: Do you want Exhibit 8 or  
10 Exhibit 2?

11 MR. BOROVIK: Well, first AG Exhibit 2.1. It's  
12 Page 2 of 18 on his schedule DJE 1.1.

13 MR. BERNET: Are you referring to his testimony  
14 or a schedule?

15 MR. BOROVIK: It's a schedule in his -- you  
16 know, it's not his -- his direct testimony. It's a  
17 schedule that was filed along with his direct  
18 testimony.

19 MR. BERNET: We --

20 MR. BOROVIK: You want to just take a look at  
21 it and then I can give it to him? Would that be  
22 acceptable?

1 I'm just going to just reference a  
2 number, that number there.

3 (Discussion off the record.)

4 MR. BOROVIK: You know, why don't you just keep  
5 that. It's okay. What I need I've got here.

6 If your Honor doesn't mind not having  
7 one, I'll just give one to the witness.

8 JUDGE DOLAN: That's okay.

9 MR. BERNET: Yeah, we'll have one in a second.  
10 Do you want to mark these?

11 MR. BOROVIK: These are not going to be entered  
12 in the record. I just have a few questions about  
13 them.

14 MR. BERNET: Okay.

15 BY MR. BOROVIK:

16 Q Okay. Looking at the first one,  
17 Mr. Donnelly, isn't it correct that in ComEd's direct  
18 case, the Company was forecasting jurisdictional  
19 general plant in service as of March 31st, 2011, to  
20 be 101.6 million, according to Dr. Efron's -- sorry,  
21 Mr. Efron's schedule you have in front of you?

22 MR. BERNET: Hold on one -- just one second.

1                   Just so we're clear, this document  
2 you're referring to, DJE 1.1; is that correct?

3           MR. BOROVIK: That's correct.

4           MR. BERNET: And in particular, you're  
5 referring to the ComEd forecast that appears in  
6 Column C?

7           MR. BOROVIK: What I've highlighted in yellow.

8           MR. BERNET: Okay. And the source at the  
9 bottom of this page for this information is response  
10 to AG 1.14. And as I understand it, that's a data  
11 request response sponsored by Ms. Houtsma in this  
12 case, and it's not -- it's not a data request  
13 response that Mr. Donnelly prepared or is sponsoring.

14                   So...

15           MR. BOROVIK: I'm not saying he is. All I'm  
16 saying is, isn't it correct that this schedule says  
17 this number. For purposes of --

18           MR. BERNET: Okay.

19           MR. BOROVIK: -- things I'll be discussing, it  
20 says what it says?

21           MR. BERNET: You're not asking him to verify  
22 the number. You're asking --

1 MR. BOROVIK: No. No.

2 MR. BERNET: Okay. No problem.

3 MR. BOROVIK: And it's Mr. Effron who's  
4 presented it. So...

5 MR. BERNET: Got it.

6 Thank you.

7 BY MR. BOROVIK:

8 Q So I'm sorry. I'll just repeat the  
9 question, if that's all right.

10 Isn't it correct that in ComEd's  
11 direct case, the Company was forecasting  
12 jurisdictional general plant in service as of  
13 March 31, 2011, to be 101.6 million, according to  
14 Effron Direct DJE 1.1 at Page 2 that you have in  
15 front of you?

16 A Page 2 --

17 MR. BERNET: And again, just so we're clear,  
18 it's not Mr. Donnelly's testimony about whether --  
19 the accuracy of that number. It's just is that what  
20 the number shows on this page, right?

21 MR. BOROVIK: Yes. And he's free to disagree  
22 with it if he --

1 MR. BERNET: Right. Got it.

2 MR. BOROVIK: -- so chooses.

3 THE WITNESS: I see the number, 101. Yes.  
4 101,581.

5 BY MR. BOROVIK:

6 Q That's correct. Okay.

7 Isn't it also correct -- if you'll  
8 just -- I'm sorry. If you'll go to your rebuttal  
9 testimony at Page 2, Line 26.

10 A You say rebuttal?

11 Q Yes.

12 A Line 26?

13 Q That's correct.

14 A I have it.

15 Q Isn't it correct that what Mr. Effron  
16 proposes was to reduce the 101.6 by the 56.9 million  
17 -- to reduce that 101.6 by 56.9 million, which would  
18 be 44.7 million?

19 A Yes. He also advises the Commission to  
20 reduce the amount by 56.9 million for general plant  
21 and 30 million for intangible plant.

22 Q Thank you.

1                   Now, going back to the next schedule  
2     that I had given you, wouldn't you agree that by the  
3     time the Company's rebuttal testimony, they had  
4     reduced their general plant as of March 31st, 2011,  
5     by 42 million to 59.6 million?

6           MR. BERNET:   And you're -- what are you  
7     referring to now?   I'm sorry.

8           MR. BOROVIK:   I'm sorry.   The next schedule.  
9     This is Dave Efron's schedule, Efron Rebuttal, DJE  
10    1.1, at 2.

11          MR. BERNET:   Just --

12          THE WITNESS:   Which represents what?

13          MR. BERNET:   Can we just -- wait for a second.  
14     I'm just -- I'm looking at the schedule that  
15     Mr. Borovik's referring to and, again, it's the  
16     source of the information that's under the ComEd  
17     forecast in general plant is AG 13.01, which is also  
18     a data request response sponsored by Ms. Houtsma.

19                         So it's not something that  
20     Mr. Donnelly would be directly familiar with.

21          MR. BOROVIK:   Again, as in the last -- or the  
22     question before last, I would just ask him to say

1 that he sees that number to be -- he could disagree  
2 with the number.

3 But is that correct, that that number  
4 you have in front of you is the number I stated.

5 A Well, I see the number in front of you  
6 (sic) as the number you stated.

7 Q So that would be correct?

8 A Correct. As I'm seeing the number -- and  
9 I'm neither dis- -- agree or disagree.

10 Q Okay. Fair enough.

11 Therefore, isn't it true that  
12 Mr. Effron's calculation proposed a reduction to  
13 general plant of 44.7 million, and from your rebuttal  
14 testimony to surrebuttal testimony, you reduced  
15 general plant by 42 million with -- with the caveats  
16 that we've discussed previously?

17 A With the caveats that we discussed, yes.

18 Q Okay. Going on to a little bit of a  
19 different area.

20 Isn't it correct that you and Mr.  
21 Effron testified in the last ComEd rate case,  
22 07-0566?

1           A     Yes.

2           Q     In that case, Mr. Effron in his rebuttal  
3     testimony proposed a reduction to the Company's  
4     forecast of plant additions of 50.9 million. Subject  
5     to check, would you agree to that?

6           A     I don't recall that.

7                     Subject to check.

8           Q     Isn't it correct that in that case, there  
9     was ultimately reduction of 40.9 million to pro forma  
10    plant in service to recognize the effect of actual  
11    versus plant additions, Quarter 1 and Quarter 2,  
12    2008?

13                     And I have an appendix of the order in  
14    Docket 07-0566 at Page 6.

15           MR. BERNET: Well, look, I mean, you know, the  
16    order says what it says.

17                     I mean, we'll stipulate that there was  
18    a reduction in that case to the amount to the extent  
19    it's in the order. I just don't see what this  
20    witness is going to say about that.

21    BY MR. BOROVIK:

22           Q     Okay. In this case, Mr. Donnelly, isn't it

1 correct that you state in your surrebuttal  
2 testimony -- I'm sorry. If you go to the surrebuttal  
3 testimony.

4 MR. BERNET: What page?

5 MR. BOROVIK: Page 67.

6 JUDGE SAINSOT: And what --

7 JUDGE DOLAN: Surrebuttal.

8 JUDGE SAINSOT: What exhibit is that?

9 MR. BOROVIK: Exhibit -- ComEd Exhibit 58.

10 JUDGE SAINSOT: Okay.

11 THE WITNESS: Page 67?

12 BY MR. BOROVIK:

13 Q Yes.

14 A Yes.

15 Q Okay. It's Line 1410.

16 A Yes. Line 1410?

17 Q Yes.

18 In this case, Mr. Donnelly, isn't it  
19 correct that you state in your surrebuttal testimony  
20 on Page 67, the Company's now forecasting 600 --  
21 656.6 million of plant additions in 2010? I'm sorry.  
22 It's that line, 555.8, and also Line 1424, 100.8.

1           MR. BERNET:   So the question is, what do those  
2 two numbers total?

3           MR. BOROVIK:   Exactly.   Right.

4           THE WITNESS:   Yes.   Correct.

5 BY MR. BOROVIK:

6           Q     And isn't it true that in your rebuttal  
7 testimony, the Company was forecasting 6- -- and I'm  
8 not going to ask you to go to rebuttal testimony.  
9 I'm sorry.

10                           In your rebuttal testimony, the  
11 Company was forecasting 666.1 million of plant  
12 additions in 2010.   This is in response to AG 13.01.  
13 And --

14           MR. BERNET:   Again --

15           MR. BOROVIK:   You know what, let me give him  
16 that -- I'm sorry.   Let me give him that.

17                           May I approach the witness?

18           JUDGE SAINSOT:   Yes, you may.

19           MR. BOROVIK:   And I have extra copies.

20           MR. BERNET:   Again, I would just state for the  
21 record, this is another data request that's sponsored  
22 by Ms. Houtsma and not by Mr. Donnelly.   So to the

1 extent that he knows.

2 JUDGE SAINSOT: Do you have three copies?

3 MR. BOROVIK: Yeah, because I'm going to -- I'm  
4 going to move for this to be entered into the record.

5 I do have three.

6 MR. BERNET: Okay.

7 JUDGE SAINSOT: Thanks.

8 MR. BOROVIK: That's the second one. Can I  
9 give you the third one when I...

10 JUDGE SAINSOT: This isn't the same thing as  
11 what you gave us before, is it?

12 MR. BOROVIK: Should be.

13 JUDGE SAINSOT: AG 13.1?

14 MR. BOROVIK: It is.

15 JUDGE SAINSOT: Okay.

16 MR. BOROVIK: It's the question and then the  
17 response --

18 JUDGE SAINSOT: Oh, you have a third copy? Oh,  
19 okay.

20 BY MR. BOROVIK:

21 Q So isn't it true that the Company was  
22 forecasting 666.1 million of plant additions in

1 2010 --

2 A Yeah.

3 Q -- per that data request response? With  
4 the understanding that you didn't sponsor that  
5 answer, you can, you know, say you don't know or it's  
6 incorrect or it is?

7 MR. BERNET: Well --

8 MR. BOROVIK: But we understand it  
9 was sponsored by another --

10 MR. BERNET: At what point in time are we  
11 talking about?

12 MR. BOROVIK: Well, didn't the number include  
13 ten months of actual plant additions?

14 It's at the point in time that that  
15 data request was answered.

16 MR. BERNET: So on November 30th?

17 MR. BOROVIK: Yes.

18 MR. BERNET: And your question is, was the  
19 forecasted pro forma 666 million --

20 MR. BOROVIK: That's --

21 MR. BERNET: -- at that time?

22 MR. BOROVIK: Yes.

1 MR. BERNET: The entire forecasted plant?

2 MR. BOROVIK: Yeah.

3 MR. BERNET: Pro forma.

4 MR. BOROVIK: Plant additions in 2010 was  
5 forecasted 666.1 million of plant additions in 2010.

6 MR. BERNET: Got it.

7 MR. BOROVIK: Yes.

8 THE WITNESS: Yes.

9 BY MR. BOROVIK:

10 Q Thus, isn't it true that just in the time  
11 about six weeks or from the Company's rebuttal to  
12 surrebuttal, its forecast of plant additions for only  
13 the last two months of 2010 decreased by 9.5 million?

14 MR. BERNET: Are you referring to something  
15 again?

16 MR. BOROVIK: Well, it's -- yes. It's the  
17 656.6 million versus the 666.1 million.

18 MR. BERNET: And does that appear on the  
19 attachment to 13.01, AG 13.01?

20 MR. BOROVIK: The 656.6 doesn't. The 666.1  
21 does in Column 1 at the bottom.

22 MR. BERNET: Column B at the bottom?

1                   The only point I'm trying to make is,  
2   are you referring to another number on this page? I  
3   don't see -- I don't see the nine -- the number you  
4   just referred to.

5           MR. BOROVIK: The 666.1 million is there.

6           MR. BERNET: Right.

7           MR. BOROVIK: And the 656.6 million were those  
8   two numbers that we added. It was on his rebuttal  
9   testimony.

10   BY MR. BOROVIK:

11           Q    Would you agree that's 9.5 million?

12           A    I'm just looking for that math here. I  
13   mean, I could go back and subject to check.

14           Q    Okay. Subject to check is -- will be good  
15   enough.

16           A    I don't see the nine million on this --

17           Q    No, it's not. I'm sorry. It's not on -- I  
18   didn't mean to suppose it was on there; but doing the  
19   simplistic math, it would be the 656.6 and the 666.1?

20           MR. BERNET: And just so we're clear, the 656.6  
21   appears in his rebuttal testimony?

22           MR. BOROVIK: That's correct -- no, no.

1 Surrebuttal. Sorry.

2 MR. BERNET: At what line?

3 MR. BOROVIK: It's 1410 and 1424. So it's the  
4 555.8 and the 100.8.

5 BY MR. BOROVIK:

6 Q Okay. Now, turning to Exhibit 32.1.

7 A Yes.

8 Q This is on Page 1, bottom of the second  
9 column.

10 Isn't it correct that at the time of  
11 the rebuttal testimony, the plant additions for the  
12 last two months of 2010 were 164.5 million?

13 It's the remaining 2010 column.

14 A You're on 32.1, the remaining 2010?

15 Q Yes.

16 A And the number you're asking me about is?

17 Q The 164 --

18 A Yes, 164 million.

19 Q Yes. Thus, the reduction of 9.5 million is  
20 a reduction of 5.8 percent?

21 MR. BERNET: You're asking him to do the  
22 calculation?

1 BY MR. BOROVIK:

2 Q Or subject to check.

3 MR. BERNET: So you're asking him to calculate  
4 the percentage change of \$9 million on 164 million?

5 MR. BOROVIK: Yes.

6 THE WITNESS: Subject to check.

7 BY MR. BOROVIK:

8 Q Okay. I'm going to go on to another --  
9 another matter.

10 You talk about in your direct  
11 testimony smart grid investments at certain places.  
12 This is a general question, but I could point to you  
13 (sic) -- or if counsel wants me to, where you talk  
14 about it.

15 MR. BERNET: Ask the question and we can...

16 BY MR. BOROVIK:

17 Q Can you define smart grid?

18 A There's many definitions of smart grid.

19 In general, it applies to an  
20 integrated comprehensive suite of technologies, when  
21 all tied together, serve to provide enhanced benefits  
22 to the power grid mainly in transforming it from a

1 basically analogue system to a digital system.

2 Q Have you also -- or could you agree or  
3 disagree with this general definition that -- that  
4 describes smart grid as two-way communicating systems  
5 that may improve efficiency or reliability and may  
6 decrease energy usage or peak-day consumption?

7 A Those can be some of the attributes of a  
8 smart grid.

9 Q Would you also agree that you probably  
10 couldn't find smart grid in Webster's Dictionary and  
11 it's -- there's several definitions probably floating  
12 around of smart grid?

13 A Yes, I would agree with that.

14 Q You talk about in your testimony certain  
15 smart grid investments.

16 Can you say whether or not ComEd is  
17 currently investing in smart grid investments as of  
18 right now? Excluding -- I'm sorry -- the AMI  
19 (phonetic) pilot.

20 A There -- what ComEd is doing, I would say  
21 there are single elements of a smart grid, such as  
22 distribution, automation that ComEd continues to

1     deploy on the system as part of a reliability toolbox  
2     item to improve reliability in certain areas, the use  
3     of distribution automation.

4                     That is just one element of a  
5     comprehensive smart grid.  So I wouldn't call that a  
6     smart grid investment because it's not tied in or  
7     integrated with a comprehensive suite of other  
8     technologies.  It's used in pocketed areas to improve  
9     -- you know, improve reliability.

10            Q     But a -- a smart grid technology that ComEd  
11     invested in -- not that it's the complete system  
12     maybe that ComEd would describe as a complete smart  
13     grid system, but the investments in technology that's  
14     considered smart grid, has ComEd been making those  
15     investments?

16            A     You know, I would say ComEd's use of  
17     certain technologies that can be integrated in the  
18     smart grid now in a distribution automation has been  
19     around for a long time in utility systems, and  
20     utilities like ComEd and others continue to invest  
21     in that; but it's not part of an integrated smart  
22     grid.

1                   Again, it's just to improve -- it's a  
2    pinpointed reliability solution to improve service in  
3    a given area.

4           Q     And how long has ComEd been investing in  
5    that?

6           A     I don't recall the exact dates.

7           Q     Okay. And you also talk about in your --  
8    in your -- again, in your direct testimony about --  
9    this is not directed at the pilot as well, but people  
10   that use hourly pricing or time-of-use pricing.

11                   Is -- is your understanding that you  
12   need smart grid to do that or that the -- the people  
13   that are -- the customers that are currently doing  
14   that are doing it with smart grid investments?  
15   Again, excluding the AMI pilot.

16           A     Could you repeat --

17           Q     Yeah, that's -- sorry. That's a long  
18   question.

19                   You talk about in your testimony  
20   certain customers, excluding the AMI pilot, that  
21   engage in real-time pricing or time-of-use pricing.

22           MR. BERNET: You know --

1 MR. BOROVIK: If you can answer it or not.

2 I mean, he does talk about this.

3 MR. BERNET: I'm just saying -- I'm just  
4 saying, can we just get a line reference just so that  
5 he can be line-oriented?

6 MR. BOROVIK: Sure.

7 MR. BERNET: Was it direct, you said?

8 MR. BOROVIK: Yeah, it was direct.

9 JUDGE SAINSBOT: And what piece of testimony is  
10 this?

11 MR. BOROVIK: I'm sorry. This is ComEd Exhibit  
12 8.0, Mr. Donnelly direct.

13 MR. BERNET: And did you have -- oh, you're  
14 looking for the page, Mike?

15 MR. BOROVIK: Yes.

16 MR. BERNET: Okay.

17 BY MR. BOROVIK:

18 Q Well, let me ask this, to move it along:

19 Do you recall in your testimony  
20 discussing that certain customers engage in  
21 time-of-use or real-time pricing?

22 A Actually, I don't. It -- that's not to say

1 it is not in there. I just offhand don't recall.

2 Q Okay. With the hypothetical that certain  
3 customers are doing that, engaging in real-time  
4 pricing, is it necessary for them to use smart grid  
5 technology to do that, in your opinion?

6 A They need a certain technology to do that.  
7 Whether it's called smart grid or not is, you know, a  
8 matter of -- a matter of debate.

9 I mean, ComEd has some real-time  
10 pricing program. Again, but in terms of smart grid,  
11 I would view smart grid as an integrated suite of  
12 technologies tied together to be delivering benefits  
13 across a multifaceted spectrum versus one particular  
14 area of the price.

15 Q And --

16 A In that sense, we don't have that deployed.  
17 You know, we have real-time pricing, but we don't  
18 have a smart grid deployed in an area with several  
19 other technologies tied in with that.

20 Q And the program you're talking about that  
21 ComEd has now, is that the RTTP program?

22 A The best of my information. That's not

1 particularly in my area, but the best of my  
2 knowledge.

3 Q And is that a -- are they using a smart  
4 grid technology that you know for that --

5 A Actually, I don't -- I can't speak directly  
6 to the type of technology actually used in that  
7 program.

8 MR. BOROVIK: Thank you.

9 No further questions.

10 JUDGE DOLAN: Thank you.

11 JUDGE SAINSOT: I have one question,  
12 Mr. Donnelly. Real quickly.

13 EXAMINATION

14 BY

15 JUDGE SAINSOT:

16 Q I think the confusion here is maybe that  
17 sometimes people call smart meters smart grid and  
18 sometimes they don't and that gets confusing.

19 So maybe if you could just say,  
20 generally, whether you -- when you call smart grid  
21 smart grid, you're including smart meters, that might  
22 be helpful.

1           A     Well, thank you, your Honor.

2                     From a technical perspective, you  
3 know, smart meters, I would view, as a part of a  
4 integrated smart grid, the smart grid being a more  
5 broad application of several technologies from --  
6 anything from in the home up through the transmission  
7 system, is all tied together to deliver benefits,  
8 with meters being one part of that.

9           JUDGE SAINSOT:   Okay.

10                    Thank you.

11           MR. BERNET:   Thank you.

12           MS. LIN:   Staff would prefer to go last, if  
13 that's okay.

14           JUDGE DOLAN:   That's fine.

15           JUDGE SAINSOT:   Who's next?

16           MR. BERNET:   Mr. Robertson.

17           MR. RIPPIE:   IIEC.

18           MR. BERNET:   We had some -- we had a  
19 stipulation with REACT.

20           MR. SKEY:   Your Honor, Chris Skey on behalf of  
21 REACT.

22                    As Mr. Bernet said, in lieu of cross

1 at this time of Mr. Donnelly, we have a set of data  
2 requests that we would introduce as REACT Cross  
3 Exhibit No. 14. If I may approach.

4 (Whereupon, REACT Cross  
5 Exhibit No. 14 was  
6 marked for identification)

7 JUDGE DOLAN: Yes.

8 JUDGE SAINSOT: You may.

9 MR. BERNET: I don't need one. Thank you.

10 JUDGE SAINSOT: And what are we calling this?

11 MR. SKEY: It's REACT Cross Exhibit 14. And  
12 I'm happy to describe what it is, if you'd like, your  
13 Honor.

14 JUDGE SAINSOT: Sure.

15 MR. SKEY: Okay.

16 JUDGE SAINSOT: Well, there's two -- oh, I  
17 thought it was --

18 MR. BERNET: It's multiple data request  
19 responses.

20 MR. SKEY: Right. It's a group exhibit, your  
21 Honor. We just -- in order to have one tab, we did  
22 it -- multiple data requests in one.

1                   It -- REACT Cross Exhibit 14 comprises  
2 ComEd's responses to REACT Data Request 2.05, which  
3 is five pages long, plus an additional exhibit or  
4 attachment. Then REACT -- the response to REACT Data  
5 Request No. 2.07; ComEd's response to REACT Data  
6 Request 2.09; ComEd's response to REACT Data Request  
7 2.10; ComEd's response to the Commerce Commission  
8 Staff's Request No. PL 3.01; and ComEd's response to  
9 Commission Staff Request PL 3.03.

10                   And it is my understanding that  
11 Mr. Donnelly is the sponsoring witness of each of  
12 these data requests.

13                   MR. BERNET: That's correct.

14                   MR. SKEY: So we would move for admission of  
15 those as REACT Cross Exhibit 14, your Honor.

16                   JUDGE DOLAN: Mr. Skey, did you mention 2.08?  
17 I see it's out of order in mine. I got 2.08 and then  
18 2.07.

19                   MR. SKEY: Actually, your Honor, I think that  
20 the page that says COC 2.08 is actually an attachment  
21 to the response to REACT 2.05.

22                   JUDGE DOLAN: Oh, okay.

1           MR. SKEY: It is a little confusing, and I  
2 apologize for that, but that's actually a part of the  
3 first data request response.

4           JUDGE DOLAN: City of Chicago. Okay. I see.  
5 All right.

6                           And there was --

7           MR. SKEY: And we would move for admission of  
8 that exhibit.

9           JUDGE DOLAN: And there's no objection?

10          MR. BERNET: No objection.

11          JUDGE DOLAN: All right. Then REACT  
12 Cross-Examination Exhibit 14 will be admitted into  
13 the record.

14                           Thank you.

15                           (Whereupon, REACT Cross  
16 Exhibit No. 14 was  
17 admitted into evidence)

18          MR. SKEY: Thank you.

19                           And we don't have any cross at this  
20 time in light of the admission of the exhibit.

21                           Thank you.

22          JUDGE DOLAN: All right.

1                   Mr. Robertson, when you're ready to  
2 proceed.

3           MR. ROBERTSON: Yes.

4                   CROSS-EXAMINATION

5                   BY

6                   MR. ROBERTSON:

7           Q     Good afternoon, Mr. Donnelly.

8           A     Good afternoon.

9           Q     My name is Eric Robertson. I represent the  
10 Illinois Industrial Energy Consumers.

11                   And in your direct testimony, you give  
12 an overview of the ComEd delivery system; is that  
13 correct.

14          A     Yes.

15          Q     Lines 20 and 21?

16          A     I'm sorry. Could you repeat the lines?

17          Q     20 and 21.

18          A     Okay.

19                 JUDGE SAINSOT: And this is what document,  
20 Mr. Robertson?

21                 MR. ROBERTSON: His direct testimony.

22                 JUDGE SAINSOT: Thank you.

1 THE WITNESS: Yes. I have it.

2 BY MR. ROBERTSON:

3 Q And you also state that the purpose of your  
4 testimony is to provide the Commission with  
5 information on how the system works; is that correct?

6 A Correct.

7 Q And that -- the system you're talking about  
8 is the ComEd delivery service system?

9 A Yes.

10 Q Now, do you -- based on your experience  
11 with ComEd and your professional training, do you  
12 have an understanding of the engineering principles  
13 of the design and operation of utility distribution  
14 systems generally and ComEd's system in particular?

15 A Yes.

16 Q Now, what is the most costly piece of  
17 equipment in a substation?

18 MR. BERNET: You're talking about a  
19 distribution substation?

20 MR. ROBERTSON: Yes. I'm sorry.

21 BY MR. ROBERTSON:

22 Q Would it likely be the transformer?

1           A     Generally, it would be the transformer.

2           Q     Now, does a substation transformer or the  
3     substation itself have fuses which affect the  
4     operation of the transformer?

5           A     There are various protection schemes that  
6     protect power transformers in substations. They're  
7     generally driven by relays that clear the  
8     transformer, if there's certain faults on --

9           Q     Okay.

10          A     -- or protect other equipment, if there's  
11     faults on the system.

12          Q     I was talking about my experience at home,  
13     but there's a piece of equipment in the substation  
14     that performs the same function that a fuse or a  
15     circuit breaker would in a private home?

16          A     A similar function. Breakers, switches.

17          Q     Now, do these pieces of equipment prevent  
18     power from being drawn into the substation in certain  
19     circumstances?

20          A     Well, if the switch is open for some  
21     reason, they're going to open a path of electricity  
22     flow thereby preventing some flow of electricity into

1 or out of a substation, if the equipment is open.

2 Q Is one of the purposes of this type of  
3 equipment to protect the transformer from potential  
4 damage?

5 A The purpose of which system?

6 Q The -- the equivalent of the fuse or the  
7 circuit breaker-type equipment.

8 A Yes.

9 Q Now, how does it work to protect the  
10 transformer?

11 Under what circumstances would it come  
12 into play?

13 A One circumstance could be if you lose an  
14 element or -- an element of equipment at another  
15 location, the substation, or some other area where  
16 the remaining transformer is required or called upon  
17 to serve increased load. If that load exceeds a  
18 certain limit, the protective equipment would open --  
19 open up the switches automatically in order to  
20 protect damage to the substation transformer due to  
21 overload.

22 Q Does ComEd, in determining the capacity of

1 these particular types of protective devices,  
2 consider what the demand for electricity in the  
3 distribution substation will be at the time of the  
4 system peak or does it give consideration to some  
5 other determination of peak on that substation?

6 A Generally, system peak.

7 Q Okay. Now, in your direct testimony,  
8 you -- do you agree that ComEd's delivery  
9 distribution system consists of both three-phase  
10 circuits and single-phase circuits?

11 A Generally, all our circuits or feeders are  
12 three-phase. There are single-phase taps off of the  
13 circuits that, you know, feed other areas or  
14 residential areas.

15 MR. ROBERTSON: Would you read the answer back  
16 for me, please.

17 Is that all right, your Honor?

18 MR. BERNET: Do you have a line reference in  
19 your direct where he talks about that?

20 MR. ROBERTSON: No, it's just a general  
21 question. It was based on his statement that he's  
22 going to describe the utility distribution system in

1 general.

2 (Record read as requested.)

3 BY MR. ROBERTSON:

4 Q Now, why would the ComEd system have a  
5 three-phase circuit? Why do they have three-phase  
6 circuits?

7 A Utility systems -- not only at ComEd, but,  
8 you know, across the country is fundamentally based  
9 on three-phase power or three-phase circuits that  
10 emanate from substations predominantly driven by  
11 commercial or industrial loading that uses  
12 three-phase power, but you also take single-phase  
13 taps, like I had mentioned, to feed other areas of  
14 single-phase load on our system as well.

15 But the backbone of circuits and  
16 feeders emanating from substations is three-phase.

17 Q Okay. And would you agree that use of  
18 three-phase transmission -- or I'm sorry, three-phase  
19 circuits at the transmission and distribution level  
20 is a more effective or efficient method of  
21 transmitting and distributing electricity than use of  
22 a single-phase circuit?

1           A     General -- yes, generally, three-phase  
2 power -- power transmission and the backbone of  
3 distribution is based on three-phase.

4           Q     Would you agree, generally, that even if a  
5 utility had only single-phase customers, that it  
6 would still be desirable from an electrical  
7 efficiency and safety standpoint to have and use  
8 three-phase circuits?

9           A     Difficult to answer because the system's  
10 based on three-phase and -- mainly to keep the system  
11 in balance, you know, across different phases on the  
12 system versus overloading one individual phase.

13          Q     So you would need three -- three-phase  
14 circuits for that purpose, if for no other purpose?

15          A     To maintain balance on the system among  
16 different phases.

17          MR. ROBERTSON: I have nothing further.

18          JUDGE DOLAN: Thank you.

19          JUDGE SAINSOT: Okay. Who's next?

20          JUDGE DOLAN: Looks like Mr. Jenkins.

21          MR. JENKINS: We have no questions now of this  
22 witness.

1 Thank you.

2 JUDGE DOLAN: All right. Then Staff.

3 CROSS-EXAMINATION

4 BY

5 MS. LIN:

6 Q Good afternoon, Mr. Donnelly.

7 A Hm-hmm.

8 Q My name is Jennifer Lin. I have some  
9 questions for you on behalf of Staff.

10 I'm going to direct your attention to  
11 your rebuttal testimony starting on Line 414. You  
12 testify that for purposes of sensible management,  
13 ComEd combines resources into single investment  
14 tracking numbers or ITNs, correct?

15 A Yes.

16 Q And an example with that -- an example of  
17 an ITN would be ComEd's entire fleet of vehicles,  
18 correct?

19 A I'm sorry. An example of?

20 Q An ITN would be -- for instance, all of  
21 ComEd's fleet of vehicles falls under one ITN.

22 A Yeah, I believe it does. Yes.

1 Q Okay. Now, on Page 15 of your surrebuttal  
2 testimony, at about Lines 308 to 328 --

3 MR. BERNET: I'm sorry. You said Page 15 of  
4 surrebuttal?

5 MS. LIN: Hm-hmm. Lines 308 through 328.

6 BY MS. LIN:

7 Q This is where you generally discuss the  
8 reassignment of costs between ITNs and categories,  
9 correct?

10 A I'm sorry. 308 to?

11 Q 328.

12 A Okay. Okay. I see that. Yes.

13 Q Now, in this -- I think it's in your  
14 rebuttal testimony. In general, do you recall  
15 referencing Ms. Ebrey's rebuttal testimony and,  
16 specifically, Ms. Ebrey's Attachment B, which is the  
17 enormous spreadsheet that lists ITNs and dropped and  
18 new categories and whatnot?

19 Do you recall generally that  
20 attachment?

21 A Do you have that?

22 MR. BERNET: Jennifer, it's in her rebuttal,

1 right?

2 MS. LIN: Yes, that's correct. It's  
3 Attachment B of Miss Ebrey's testimony.

4 THE WITNESS: In direct or rebuttal?

5 BY MS. LIN:

6 Q The Attachment B to her rebuttal testimony.

7 And you discuss the attachment at  
8 about Line 319 of your rebuttal testimony.

9 A Okay. I have Ms. Ebrey's rebuttal and  
10 attachments.

11 Q Okay. And would you agree that this is  
12 also Attachment 2 to the Company's response to  
13 Ms. Ebrey's Data Request 12.04?

14 A I'm sorry. Back to Ms. Ebrey's rebuttal.  
15 Was there a table there you had mentioned?

16 Q It's Attachment B to her rebuttal  
17 testimony, which also happens to be Attachment 2 to  
18 the Company's response to her Data Request 12.04. I  
19 believe if you look up in the upper right --

20 A Oh, after Attachment 2 --

21 Q Correct.

22 A -- to 12.04.

1 Q Correct.

2 Would you agree that that is the  
3 Company's response to TEE 12.04?

4 A Yes.

5 Q Now, I'm anticipating that Mr. Bernet might  
6 suggest that this is a DR response that's sponsored  
7 by Mr. McMahan. I will give him that much.

8 However, you specifically discussed  
9 this attachment throughout your rebuttal testimony,  
10 correct?

11 MR. BERNET: Do you have an extra copy of it?

12 MS. LIN: Of?

13 MR. BERNET: Of Attachment B.

14 MS. LIN: No, but I can move ahead and we'll  
15 get to where we're going.

16 MR. BERNET: Okay.

17 MS. LIN: I'm not going to be talking about it  
18 specifically. I'm just asking him if he's familiar  
19 with the document.

20 MR. BERNET: And that's -- just so we're clear,  
21 that's the document that had the ITNs on it that had  
22 the new, dropped, same; right?

1 MS. LIN: Correct.

2 MR. BERNET: Okay.

3 THE WITNESS: Yes.

4 BY MS. LIN:

5 Q You're generally familiar with this  
6 document, correct?

7 A Yes.

8 Q Even though it's Mr. McMahan's sponsored  
9 DR?

10 A I'm going by counsel around it being  
11 Mr. McMahan's sponsored DR, but I'm familiar with the  
12 table.

13 Q Okay. In your testimony, you test- -- in  
14 your rebuttal testimony, you testify that movement  
15 among and between ITNs and categories is by design  
16 and doesn't indicate any true variability in ComEd's  
17 work plan, correct?

18 A Yes.

19 Q And you also suggest that changes don't  
20 indicate a change in the planned work, but that a  
21 portion of a project might need to be reported in a  
22 different category, correct?

1           A     That's correct.

2           Q     And, in fact, at Line 325, you quote the  
3     Company's narrative response to Ms. Ebrey's 12.04  
4     which states, quote, In some situations, a new or  
5     dropped ITN is shown as dropped from one category and  
6     new for another category.

7                     Do you recall that?

8           A     I see that near Line 12.

9           Q     And by this, do you mean that the same ITN  
10    or project was simply reclassified from one category  
11    to another?

12          A     Yes, in that situation.

13          Q     Okay. And you also state that it does not  
14    indicate that an ITN was necessarily new or dropped  
15    or changed, correct?

16          A     Correct.

17          Q     Just reclassified?

18          A     Moved to another category.

19          Q     Now, in that testimony, would you  
20    characterize these changes and movements between ITNs  
21    and categories as routine and inconsequential by  
22    saying that they're not new or dropped or changed,

1 but simply reclassified?

2 A And could you repeat the question?

3 Q Would you characterize those changes and  
4 movements as routine or inconsequential?

5 A If I -- if it was an example of an ITN just  
6 reclassified from one category to another, yes, I  
7 would view that as not a new item, but the same item  
8 just reclassified.

9 MR. BERNET: You're not talking about any  
10 particular ITN. You're just generally speaking --

11 MS. LIN: Generally speaking.

12 BY MS. LIN:

13 Q From your -- and I'm trying to get a sense  
14 of your testimony in general.

15 You talk about movement among/between  
16 the categories; between ITNs. You're saying it's not  
17 changed. It's just reclassified. So I'm asking you  
18 if you would characterize that as inconsequential or  
19 routine.

20 MR. BERNET: But I think -- I'll object to the  
21 question because I think it's -- it's more than one  
22 question.

1                   She asked him whether he's talking  
2 about changes between categories and between ITNs.  
3 So I think it's a double question.

4           MS. LIN: We can split it up then.

5 BY MS. LIN:

6           Q     Would you classify movement and changes  
7 within categories routine and inconsequential?

8           MR. BERNET: And just so we're clear, when you  
9 say "categories," can you tell the witness what  
10 you're referring to?

11 BY MS. LIN:

12           Q     So within an ITN, you've got categories  
13 within an ITN. So it's under the same ITN, but  
14 different categories within the ITN, and you've got  
15 movement between -- I should say among the categories  
16 under the same ITN.

17           A     Yeah, it would be -- if you'll allow me, it  
18 would be more of the opposite. There may be one  
19 category --

20           Q     Okay.

21           A     -- and several ITNs --

22           Q     Okay.

1           A     -- in a particular category.

2           Q     Okay.  So let's do it that way.

3                     If there's movement among the  
4 different categories, would that be routine and  
5 inconsequential?

6           A     Well, there are many -- there are many  
7 examples.

8                     A lot of movement is inconsequential  
9 because it represents certain fixed costs that start  
10 out in a certain ITN and then are allocated into  
11 another ITN as work is completed, like, you know,  
12 fixed labor and engineers or capitalized overhead  
13 such as back office costs.

14                    So they start out in one ITN to  
15 capture the fixed cost, and then they're allocated  
16 month by month as work gets completed.  And they  
17 actually get then allocated into the individual ITNs  
18 where the work is completed.

19                    So in that sense, that's by design,  
20 that movement of money between ITNs to reflect that,  
21 which would be as expected.

22           Q     Okay.  What about movement between

1 categories then?

2 MR. BERNET: And just so we're clear, Jennifer,  
3 on Page 15 where you're referring to his testimony,  
4 when you say "categories," at that point in this  
5 testimony, he's talking about the categories of  
6 general plant and real estate and general plant,  
7 other.

8 Are those the categories you're  
9 referring to or some other category?

10 MS. LIN: We can talk about those categories,  
11 since he's specifying them in particular.

12 BY MS. LIN:

13 Q I'm just sort of trying to get a feeling or  
14 a sense of what you're suggesting in your testimony.

15 So when you talk about -- you know, I  
16 believe your quotes are -- actually, you quote again  
17 the Company's narrative response: A new or dropped  
18 ITN is shown as dropped from one category and new for  
19 another category.

20 So I asked that question whether or  
21 not you mean that it's simply reclassified from one  
22 category to another, and I believe you responded yes.

1                   So I'm just asking you if that  
2 reclassification between categories or from one  
3 category to another is a routine thing?

4           A     I would say in that particular case, it may  
5 not be routine.  It's just not -- does not represent  
6 a change in the -- a change in the work plan --

7           Q     Okay.

8           A     -- for a particular item.

9           Q     Fair enough.

10                   Now, looking at, again, Ms. Ebrey's  
11 Attachment B.  Just from a quick review of that  
12 document, can you -- can you easily indicate whether  
13 projects were dropped in one category and then added  
14 or new to another category?

15           MR. BERNET:  Are you referring to a specific  
16 page?

17           BY MS. LIN:

18           Q     Just in general if you're able to tell  
19 whether projects are dropped in one category and then  
20 added or new to another category.

21           A     Dropped from -- can you repeat the  
22 question?

1 Dropped from --

2 Q One category and then added or new to  
3 another category, isn't it easy -- are you easily  
4 able to determine that just from looking at the  
5 document or do you think it would be easier if --

6 A No. I mean, you know, I could -- it's not  
7 readily apparent on inspection of the table other  
8 than, inherently, on examples like cap overheads  
9 which, over time, do start out in capitalized  
10 overheads and then allocate to individual ITNs in  
11 other categories as work gets completed.

12 Q Would it be more helpful if the document  
13 was sorted by ITN number and then you could more  
14 readily see how projects were transferred from one  
15 category to the next?

16 A I'm not sure it would be more helpful,  
17 given perhaps over a thousand ITNs that we have when  
18 work gets completed.

19 MS. LIN: Permission to approach.

20 JUDGE SAINSBOT: And for the record -- I'm sure  
21 this is in your testimony -- an ITN number is what?

22 MS. LIN: Investment tracking number.

1                   (Whereupon, Staff Cross  
2                   Exhibit No. 8 was  
3                   marked for identification  
4                   as of this date.)

5   BY MS. LIN:

6           Q     So I'm going to show you what's been marked  
7   as Staff Cross Exhibit No. 8.

8           MS. LIN: Does anyone else want?

9           MR. BERNET: This is the public version?

10          MS. LIN: This is the public version.

11   BY MS. LIN:

12          Q     Subject to check -- you're more than  
13   welcome to subject to check it overnight, if you'd  
14   like -- would you agree that this document includes  
15   the same information as Attachment B, but sorted by  
16   ITN? Again, subject to check.

17          A     Subject to check.

18          Q     Okay. I'm going to ask you to look at the  
19   first page.

20          MR. BERNET: So, Jennifer, just so the record's  
21   clear --

22          MS. LIN: Yes.

1 MR. BERNET: -- at the top right-hand corner of  
2 this document, it says TEE 12.04, Attach 2 public.  
3 So is this the attachment to that data request  
4 response?

5 MS. LIN: Yes.

6 MR. BERNET: In other words, you haven't  
7 manipulated this data at all?

8 MS. LIN: Just sorted it.

9 MR. BERNET: You sorted it.

10 MS. LIN: By ITN.

11 MR. BERNET: In other words, when we produced  
12 the answer to the data request, we produced an  
13 operable spreadsheet, and then you guys sorted it.

14 MS. LIN: Yes.

15 MR. BERNET: Okay. So it's not identical to  
16 what was produced in response to 12.04, Attachment 2?

17 MS. LIN: No, but the data inside --

18 MR. BERNET: Should be the same.

19 MS. LIN: -- should be identical -- is  
20 identical.

21 MR. BERNET: Okay. And who did that?

22 MS. LIN: Staff did.

1           MR. BERNET:  And when you say "sorted by ITN,"  
2  can you just explain that, please?

3           MS. LIN:  Sure.

4                        So if you look at the left-hand  
5  column, ITNs are now sorted so that all of the  
6  different categories are easily referenced by ITN.

7           MR. BERNET:  Okay.  So it looks to me like what  
8  you've done is sorted -- sorted by ITN in numerical  
9  order.

10          MS. LIN:  Yes.

11          MR. BERNET:  Is that right?

12          MS. LIN:  Fair -- yes, that would be fair.

13          MR. BERNET:  Okay.  And so when you say sorted  
14  by category --

15          MS. LIN:  Not sorted by category.  Simply  
16  sorted by ITN.

17          MR. BERNET:  Okay.  So that ITNs are now in  
18  numerical order --

19          MS. LIN:  Yes.

20          MR. BERNET:  Okay.  Ascending numerical order.

21          MS. LIN:  Yes.

22          MR. BERNET:  And so the categories -- so it's

1 not organized the way it was originally organized,  
2 but all the data's here; that's what you're saying?

3 MS. LIN: Correct.

4 And then everything from, you know, on  
5 to the right is the same.

6 MR. BERNET: Okay. I'm good.

7 BY MS. LIN:

8 Q Okay. So I'm going to have you look at the  
9 first page, and I'm going to ask you to look at  
10 the -- I should say what is this -- the column  
11 "dropped."

12 Would you agree that there are five  
13 ITNs that are indicated as "dropped"?

14 A Yes.

15 Q Would you agree that none of those are  
16 shown as transferred to another category as "new"?

17 A Although it's not -- it's not apparent.  
18 I'd have to spend more time on the spreadsheet in  
19 that, you know, there may be some ITNs where they're  
20 dropped, but there are new other ITNs that are of  
21 different specific numbers that are taken out on a  
22 unique project and the other ITN that you're

1     referencing is dropped, maybe eliminated, and other  
2     different ITNs that are specific have taken its  
3     place.

4                     It's just hard to, you know, look at  
5     it on an ITN-by-ITN basis.

6             MR. BERNET:   And, Jennifer, I just want to -- I  
7     have one more clarifying question.

8                     So let's take a look at one line.   So  
9     4794.   What you're saying is all the information to  
10    the right of that, there were no changes made by  
11    Staff in terms of identifying something as same,  
12    dropped, new or any of the numbers, any of the  
13    values?

14             MS. LIN:    Correct.

15             MR. BERNET:   Okay.   Thank you.

16     BY MS. LIN:

17             Q     I guess I'm asking just from this document  
18     itself.   There's no apparent recategorization -- or I  
19     should say replacement of a "dropped" category into  
20     the "new" category?

21                     And, again, looking at this because  
22     this is what the Company provided us.

1                   So just looking at the five -- for  
2 instance, the five ITNs that I've asked you to look  
3 at that say "dropped," if you go over to the "new"  
4 column, it doesn't say "new" next to the word  
5 "dropped" for that same ITN, again, just from this  
6 document itself?

7           A     Yes.  And, again, I'd have to study it  
8 more, but I -- you know, if certain ITNs are reduced  
9 and new ones are taken out, they would show up in  
10 "new" and "other" lines, not right next to the one  
11 that says "dropped."

12           Q     But they would show up as "new" under the  
13 same ITN, correct?

14           A     No, it would be -- in some cases, the --  
15 the unique -- it would be different unique ITN --  
16 different ITN numbers.

17                   So, therefore, they wouldn't show to  
18 the right of "dropped" because it would be a  
19 different number.

20           Q     Okay.  Well, then does that mean it's a new  
21 project or a different project if it's got a new ITN?

22           A     In some -- in some cases, our work plan

1 would anticipate a certain number of projects, say,  
2 individual projects over \$100,000 and at the --  
3 perhaps at the original pro forma period.

4 And then as unique projects are  
5 identified as the work plan becomes more specific,  
6 then those unique projects over \$100,000 would be all  
7 different ITNs, different than the original ones.

8 So that's why it's difficult to look  
9 left to right in trying to make the analysis that  
10 you're mentioning.

11 Q Okay. All right. So I'm going to ask you  
12 to look at Page 4 now of Staff Cross Exhibit No. 8.

13 A Yeah.

14 Q Page 4.

15 A Okay.

16 Q Subject to check -- I'm not going to ask  
17 you to count all of them, but would you agree at that  
18 there might be 26 ITNs that have been indicated as  
19 "dropped"? Again, subject to check.

20 A Subject to check in counting those up.

21 Q Now, if you look at ITN 29102. Would you  
22 agree that -- again, notwithstanding the comment you

1 made in the last question about how it might be  
2 categorized as "new" under a new ITN, again, just  
3 from looking at this document, would you agree that  
4 29102 is the only one that's shown as transferred to  
5 another category as "new"?

6 And it's continued on Page 5, if that  
7 helps you answer the question.

8 MR. BERNET: You're asking him, just of the  
9 ITNs that are on that page and going over to the  
10 first page -- Page 5, if that's the only one out of  
11 those 26 that were dropped that shows a "new" next to  
12 it?

13 MS. LIN: Correct.

14 BY MS. LIN:

15 Q And, again, notwithstanding what you had  
16 talked about earlier that there might be new ones  
17 under new ITNs.

18 A It's difficult to say the exact reason for  
19 that transfer -- or not transfer even, but the --  
20 you're looking at an ITN 29102 on the bottom of  
21 Page 4 with an original pro forma amount, and then  
22 following to the right, a slight -- you know, an

1 increase in investment amount in the updated  
2 pro forma.

3 The same ITN is listed as "new" on  
4 Page 5, a new -- a new one in that category. It's --  
5 without doing some additional research, it's hard to  
6 under- -- it's hard to comment on what the exact  
7 reason for that is, you know, like specific work, for  
8 example, in substations, in particular substations  
9 and transmission.

10 Even in corrective maintenance has --  
11 has specific work that's identified. They do take  
12 out, you know, an additional ITN. It could be that  
13 there was additional specific work identified between  
14 the pro forma and the updated pro forma.

15 It's very difficult to say and would  
16 only be conjecture without some additional analysis  
17 on that particular item.

18 Q Okay. Would you agree, subject to check,  
19 that, again, just from review of the document, that  
20 the net change to the pro forma adjustment for the  
21 transfer is an increase of 138,459?

22 MR. BERNET: I'm going to object. No

1 foundation.

2 MS. LIN: It's just a simple mathematical this  
3 minus this.

4 MR. BERNET: What is it? Minus what?

5 MS. LIN: It is Line -- the dropped amount of  
6 54,112, which is at the first 29102 all the way to  
7 the right, the net 54,112, and then the new amount on  
8 the top of Page 5 of 192,571.

9 So it's 192,571 minus 54,112.

10 THE WITNESS: Well, again, the -- if you could  
11 draw -- if I could comment briefly, on the bottom of  
12 Page 4, second from the bottom, the ITN 29102, it  
13 says "back office."

14 Again, in the original pro forma  
15 period, I believe that represents to be from  
16 January 2002, \$54,000. As a back office item, that  
17 number gets then allocated over time into areas where  
18 the work is actually completed.

19 So if that says "dropped," it may mean  
20 that that particular fixed labor, you know, in the  
21 back office of 54,000 may have been -- may have been  
22 spread or allocated, you know, to not representing --

1 it would not represent exactly a reduction, but it  
2 may represent an addition to perhaps other areas  
3 where that work was completed, since it's back  
4 office.

5 So without some further analysis, even  
6 some straight math, you know, warrants some further  
7 analysis on that, mainly due to the nature of some of  
8 the back office, the fixed costs that allocate to  
9 where the work is done.

10 (Change of reporters.)

11 Q Okay. So would it be fair then that the  
12 54112 number, once the work has been completed might  
13 be reassigned to both different categories and a  
14 different ITN than 29102 back office?

15 A It could be or it could go -- it could go  
16 to 29102 where the corrected maintenance work is  
17 actually done, it's just very -- it's hard to comment  
18 on that here just looking at this spreadsheet.

19 Q Okay. Now, I'm going to direct your  
20 attention to your surrebuttal testimony at Lines 326  
21 through 327.

22 MR. BERNET: That's 58; right?

1 MS. LIN: I'll take your word for that.

2 THE WITNESS: Lines 326 and 327?

3 BY MS. LIN:

4 Q That's correct.

5 A Yes, I see that.

6 Q Now, here you actually cite ITN 42418  
7 specifically; correct?

8 A Yes.

9 Q And you cite it as an example of a transfer  
10 of an ITN from general plant real estate to general  
11 plant other; correct?

12 A Yes.

13 Q Again, taking a look at Staff Cross Exhibit  
14 No. 8, if you go to Page 14 of that exhibit --

15 A Okay.

16 Q -- do you see that particular movement  
17 under 42418? You'll see that it goes from general  
18 plant real estate to general plant other. Well, it  
19 doesn't say "other" in the spreadsheet, but it says  
20 "other" in your testimony; but it goes from real  
21 estate -- I should say it goes from -- yeah, it goes  
22 from real estate to general plant, dropped from real

1 estate, new in general plant.

2 A Actually, 42418 drop from -- a drop from  
3 real estate 574,000, Line 39, and then there is a new  
4 ITN of 207,586 general plant, whether there's some  
5 other minuses and pluses in that, I'm not sure; but  
6 it does seem to reflect a movement from general plant  
7 only because it ties into the testimony of 42418,  
8 which was originally in general plant real estate and  
9 is currently in general plant other.

10 Q Okay. In addition to that project being  
11 transferred from one category to another from real  
12 estate to general plant other, would you agree that  
13 the amount of that project has also decreased by more  
14 than half?

15 Again --

16 A Yeah, I don't know without some other  
17 analysis of that particular ITN, whether there's some  
18 other investments under that same ITN that may be  
19 involved in that reduction.

20 Q Okay. I'm going to have you look at your  
21 Exhibit 58.10 attached to your rebuttal testimony.

22 A Okay.

1 MS. LIN: Does anyone need this for a  
2 reference?

3 (No response.)

4 I'll mark it as 9 just for people to  
5 have.

6 JUDGE SAINCOT: Staff Cross Exhibit 9?

7 MS. LIN: Yes.

8 (Whereupon, Staff Cross  
9 Exhibit No. 9 was  
10 marked for identification  
11 as of this date.)

12 BY MS. LIN:

13 Q Okay. So the first page of this exhibit  
14 appears to be a spreadsheet summarizing purchase  
15 orders or what I'm going to call POs and then there  
16 are purchase orders and one requisition or at least a  
17 screen shot of a requisition following the  
18 spreadsheet.

19 Would you agree that that accurately  
20 describes your Exhibit 58.10?

21 A Yes. Just to clarify, it includes several  
22 purchase orders?

1 Q Mm-hmm.

2 A Thank you.

3 Q Yes. Sorry.

4 Was this document, meaning the  
5 spreadsheet, prepared by you or someone under your  
6 supervision or direction?

7 A Yes.

8 Q Which one was it? You or someone --

9 A Someone under my direction.

10 Q Okay. And was this spreadsheet prepared  
11 for the preparation of your surrebuttal testimony  
12 filed on January 3rd?

13 A Yes.

14 MR. BERNET: When you say "spreadsheet," you're  
15 referring to the first page of your cross exhibit;  
16 right --

17 MS. LIN: Precisely.

18 MR. BERNET: -- which is the last page of his  
19 58.10; right?

20 MS. LIN: I thought it was the first one, but I  
21 could be wrong, but I believe it's the --

22 MR. BERNET: Okay. I'm sorry.

1 MS. LIN: Just for general purposes, I'm  
2 calling it a spreadsheet whether or not you want to  
3 call it something else, but I'm going to call it a  
4 spreadsheet.

5 BY MS. LIN:

6 Q Okay. So there's six purchase orders I  
7 believe that follow the spreadsheet and then a very  
8 last page which appears to be some sort of screen  
9 shot and it looks like it might be some sort of  
10 purchase requisition, correct, and then six different  
11 purchase orders?

12 A Yes.

13 Q Now, I'm going to ask you to just, if you  
14 can, remember your rebuttal testimony which was filed  
15 as Exhibit 32.0 and the huge voluminous Exhibit 32.2  
16 that was produced by the Company. I am sure you  
17 don't have all of that information in front of you  
18 because I believe it was about 2 megabytes of  
19 information.

20 So I'm just asking if you recall,  
21 generally, the large voluminous Exhibit 32.2 that was  
22 sponsored by you and produced by the Company? And,

1 in fact, it had to be delivered via CD to all the  
2 parties?

3 Do you recall that exhibit?

4 A Yes. The CD, yes.

5 Q Okay. Now, isn't it correct that since the  
6 date of your rebuttal testimony, which was filed on  
7 November 22, Exhibit 32.2 had been subsequently  
8 revised twice?

9 A I don't recall the amount of revisions that  
10 32.2 received.

11 Q Subject to check, would you --

12 A Yes, subject to check.

13 Q And subject to check again, the proper  
14 Exhibit 32.2, which was entitled, Second Corrected  
15 was filed on e-Docket on December 3rd; correct?

16 A Subject to check.

17 MS. LIN: Okay. Now, in -- I'm going to pull  
18 out one subfolder that was in this exhibit and I've  
19 made copies for everybody. This is 10, Staff Cross  
20 Exhibit 10.

21

22

1                   (Whereupon, Staff Cross  
2                   Exhibit No. 10 was  
3                   marked for identification  
4                   as of this date.)

5 BY MS. LIN:

6           Q     So subject to check, in this -- on the CDs  
7           there was one subfolder that was entitled, General  
8           Plant Vehicles for ITN 21402 and it purported to show  
9           records for ComEd's fleet of vehicles.

10                   Subject to check, would you agree that  
11           there was such a folder in the -- on the CDs?

12           A     Oh, is that what you're -- you distributed?

13           Q     I'm leading up to this.

14           A     Oh.

15           Q     Would you agree that there was such a  
16           folder, subject to check?

17           A     Subject to check, I don't recall those  
18           folders.

19           Q     Okay. Subject to check, in that folder,  
20           General Plant Vehicles, there was a file, a PDF file,  
21           which contained purchase orders and that PDF file was  
22           entitled, 2010 Fleet POs. Would you agree to that,

1 subject to check?

2 MR. BERNET: Jennifer, I'm sorry, where do you  
3 see the ITN number on this page? You referred to an  
4 ITN number.

5 MS. LIN: I don't. It was -- the name of the  
6 subfolder was called General Plant Vehicles for  
7 ITN 21402 and it was found in Exhibit 32.2.

8 MR. BERNET: And you're saying this is the only  
9 document that was there?

10 MS. LIN: No. When you double-click that  
11 subfolder, one of the files found in that subfolder  
12 is what I'm showing Mr. Donnelly as Cross Exhibit 10  
13 and this is the file and it's entitled, 2010 Fleet  
14 POs and it's a PDF file and I've made a copy of that  
15 PDF file for you.

16 BY MR. LIN:

17 Q Subject to check, would you agree that this  
18 was found in that file?

19 A If this was found in 32.2?

20 Q Yes --

21 A Yes --

22 Q -- which was your exhibit.

1           A     -- subject to check.

2           Q     Okay.  So taking a look at Staff Cross  
3     Exhibit No. 10, would you agree -- we're a state, so  
4     we're broke, so we use double-sided --

5           A     Cross Exhibit 20?

6           Q     This is Staff Cross Exhibit No. 10, I  
7     believe.  Did I -- it's 10, very poorly written.

8           A     Thank you.  Just checking.

9           Q     So, again, taking into consideration the  
10    double sided, you know, feature, this file includes,  
11    again, subject to check so you don't have to go  
12    through it all, or if you do want to go through it  
13    all, you're welcome to; but in this file you'll find  
14    four spreadsheets, again, similar to the one we  
15    looked at earlier.  There's four spreadsheets.  One  
16    of them is for various vendors; one of them is for  
17    Sutton Ford; one of them is for Chicago  
18    International, and one of them is for Altec.

19           MR. BERNET:  I'm sorry, can you point to it in  
20    the document?

21           MS. LIN:  Sure.

22    BY MS. LIN:

1           Q     If you look at the first page of Staff  
2     Cross Exhibit 10, you'll see open purchase orders and  
3     it's an Excel document, so this is one spreadsheet.  
4     This is for a few various vendors, Runnion, Sauber,  
5     CD, and then you'll have some purchase orders that  
6     follow and then you'll see another spreadsheet later  
7     on down for Sutton Ford and then a little later on  
8     you'll see another spreadsheet for Chicago  
9     International and then you'll see another spreadsheet  
10    for Altec and then I'm assuming -- and maybe you can  
11    verify -- that the spreadsheet will summarize the  
12    purchase orders that follow the spreadsheet in this  
13    file.

14                         Would you agree?

15           MR. BERNET:  I think we have the ability to put  
16    32.2 up on the screen if that would be helpful,  
17    but...

18           THE WITNESS:  Yeah, I'm just not following  
19    other than maybe having to do more analysis whether  
20    the spreadsheet represents purchase orders prior to  
21    the spreadsheet or post to the spreadsheet and why  
22    I'm scanning this.

1 BY MS. LIN:

2 Q Okay. I'm just asking you if it appears as  
3 though the spreadsheet represents -- or summarizes is  
4 a better word that I'm going to use -- the purchase  
5 orders that follow the spreadsheet. And, again,  
6 maybe not so much the particulars but just generally  
7 speaking, the spreadsheets would summarize the  
8 purchase orders by vendor number, by unit price, by  
9 description, by vendor and by purchase order number?

10 A It's -- I'm just scanning these purchase  
11 orders and this spreadsheet and it's just difficult  
12 to say in terms of -- I'm trying to find one-to-one  
13 math for the spreadsheet for the purchase order. I  
14 do -- so I'm finding it hard to answer your question  
15 directly. I do know that the 32.2, you know, exhibit  
16 was designed to show a sample of documentation in  
17 various scopes of work. I'm not sure it includes  
18 every piece of documentation in the works, so that's  
19 the reason why I'm finding it difficult to match the  
20 spreadsheet totals to the individual purchase orders  
21 and just quickly scanning it here.

22 Q Fair enough.

1                   Subject to check, would you agree --  
2   and, again, I'll allow you to subject to check it  
3   overnight if you'd like to in your bed tonight if you  
4   desire to do that -- but subject to check, the  
5   purchase orders -- every single purchase order is  
6   reflected on the summary page?

7           A     Okay. Subject to check.

8           MR. BERNET: For fleet?

9           MS. LIN: For fleet. And, again, this could be  
10   a sample. I'm not suggesting that this is all, but I  
11   will concede that this is a sample; but all of the  
12   spreadsheets will have a corresponding PO that  
13   matches the specific line item on the spreadsheet.

14          MR. BERNET: In other words, you did the math?  
15   You did the check?

16          MS. LIN: I did the math. I did the -- trust  
17   me, I've looked at this ad nauseam.

18          THE WITNESS: Thank you. Subject to check.

19   BY MS. LIN:

20          Q     So now we're going to do something fun  
21   here. I'm going to have you take 58.10, which is the  
22   smaller one that I had just given you, Staff Cross

1 Exhibit No. 9 --

2 A Wait a minute. I'm sorry. You said 58.10?

3 Q I'm sorry, it was 58.10, and let me give  
4 you a copy of it so you don't have to go flipping  
5 back and forth.

6 I'm going to have you look at 58.10  
7 and I'm going to have you put right next to it your  
8 32.2, Staff Cross Exhibit 10, and we're going to kind  
9 of refer to the both of them.

10 Now, in the Staff Cross Exhibit 10,  
11 Altec -- the vendor Altec and the POs that follow for  
12 Altec are found towards the end, so about six or  
13 seven pages from the back you'll see a spreadsheet  
14 that shows the Altec vendor.

15 A On Staff Cross Exhibit 10?

16 Q Correct.

17 A Yes.

18 Q Now -- okay. So just keep that there.

19 If you look at 58.10, Staff Cross  
20 Exhibit No. 9, and you turn the page over, the first  
21 purchase order you'll see is to Altec in the amount  
22 of \$1.866 million; correct?

1           A     Yes.

2           Q     For 12 TA-50 installed hybrid chassis or  
3 something like that?

4           A     Yes.

5           Q     So 12 things in the unit price of 155,000  
6 totaling approximately \$1.866 million?

7           A     Yes.

8           Q     Okay. Subject to check, would you agree  
9 that this purchase order was not included in the 2010  
10 fleet POs provided with Exhibit 32.2?

11          A     You know, subject to check, I'm just trying  
12 to scan it here on the stand.

13          MS. LIN: Maybe your attorneys can verify that  
14 this purchase order was not included in 32.2, subject  
15 to check.

16          MR. BERNET: We stipulate to that.

17          MS. LIN: Okay.

18 BY MS. LIN:

19          Q     Now, I'm asking you to look at the PO, the  
20 purchase order again.

21                         Would you agree that it shows a  
22 delivery date of December 30, 2010?

1           A     Yes.

2           Q     Now, taking a look at the spreadsheet --

3           MR. BERNET:  Again, spreadsheet on 58.10?

4           MS. LIN:  On 58.10.

5     BY MS. LIN:

6           Q     The corresponding amount, 1.866 million,

7     which is the last line of the spreadsheet --

8           JUDGE SAINSOT:  Which spreadsheet is this?

9           MS. LIN:  The spreadsheet on Staff Cross

10    Exhibit No. 9.

11          JUDGE SAINSOT:  Okay.

12    BY MS. LIN:

13          Q     On the spreadsheet, would you agree that

14    the -- under its description it says, June 2011

15    delivery?

16          A     Yes.  March 2011.  Am I looking at the

17    right --

18          Q     It's the last --

19          A     Oh, the last one.

20          Q     1.866?

21          A     1,866,485.28, June of 2011.

22          Q     Right.  So on the spreadsheet it says June

1 2011 delivery, however, on the PO itself it says  
2 delivery date 12/30/2010; correct?

3 A Yeah, that's right. I think -- yes, that's  
4 right.

5 Q And on the spreadsheet it also shows that  
6 the funds are pending; correct? It says, Pending  
7 funds added to blanket PO?

8 A Yes.

9 Q Okay. Now, I'm going to take you to the  
10 last purchase order in 58.10. This is the one to  
11 Chicago International Trucks, it is for 12 units --  
12 or 12 things, again, for hybrid trucks, 12 things, a  
13 unit price of 152,000 each for a total of 1.825  
14 million. Would you agree that that's the PO?

15 A Yes.

16 Q And on the PO itself -- hold on. Let me  
17 take you back.

18 Would you agree again -- or maybe your  
19 attorneys could stipulate that this PO was also not  
20 provided in Exhibit 32.2 under 2010 fleet POs.

21 MR. BERNET: Stipulate.

22 BY MS. LIN:

1           Q     So I'm going to ask you to look at the PO  
2     itself.  Would you agree that the delivery date on  
3     the PO says 12/29/2010?

4           A     Yes.

5           Q     Under Description it says, March 2011  
6     delivery; correct?

7           A     That's correct.

8           Q     Now, again, going back to the spreadsheet  
9     and looking at that particular line item, which is  
10    the fourth line down, it also says, March 2011  
11    delivery; correct?

12          A     Yes.

13          Q     So just to clarify, these two POs, the one  
14    for 1.825 million and the one for 1.866 million were  
15    never included in discovery or as an attachment to  
16    your rebuttal testimony, it wasn't tendered until  
17    just now in surrebuttal testimony as part of  
18    Exhibit 58.10; correct?

19          A     I believe that's the case.

20          Q     Now, on Line 1350 of your surrebuttal  
21    testimony, this is where you lay the foundation for  
22    ComEd Exhibit 58.10.  You talk about 58.10 as

1 providing further support for these investments and  
2 you actually testify that purchase orders and  
3 requisitions have now been issued for all fleet  
4 purchases; correct?

5 MR. BERNET: I'm sorry, what page was that?

6 MS. LIN: Line 1350 of Mr. Donnelly's  
7 surrebuttal testimony. This is where, again, you are  
8 laying the foundation for Exhibit --

9 MR. BERNET: I see that.

10 BY MS. LIN:

11 Q Okay. Just as a point of clarification,  
12 were these purchase orders not previously issued?

13 A My understanding and as we've gone through  
14 these is that these purchase requisitions, the two we  
15 discussed, had the delivery date -- they were cut for  
16 2011 for the fleet purchases and the delivery date  
17 was entered in error for 2010. If I recall in  
18 discussions with my staff, I would have to check that  
19 and that -- the delivery date and the description.  
20 I'm just trying to recall. I think the delivery date  
21 and the description represents 2011 -- represents the  
22 projected delivery -- the projected delivery dates.

1           Q     Okay.  Now I'm going to have you look at,  
2     again, 58.10 and let's look at the second purchase  
3     order, which is in the amount of 397,000, again, to  
4     Altec Industries.

5           A     I'm sorry, which one again?

6           Q     The second one.  Which will be the third  
7     page.

8           A     Yes.

9           Q     397,000 to Altec Industries for three --  
10    three things?

11          A     I'm sorry, are we in 58.10?

12          Q     Yes.  It would be the third page, not the  
13    third PO, but the second PO.

14          MR. BERNET:  It's No. 010752222.

15          MS. LIN:  Thank you.

16          THE WITNESS:  010752222.

17    BY MS. LIN:

18          Q     Release No. 8.

19          A     I see it.

20          Q     Okay.  Now, what is the delivery date on  
21    this PO, per the PO itself?

22          A     Per the PO, it's showing August 4th, 2010.

1           Q     Okay.  So a delivery date of August the 4th  
2 of 2010.

3                     Now, let's flip over to the  
4 spreadsheet.

5                     What is -- would you agree that on the  
6 spreadsheet it says, February 2011 delivery?

7           A     Yes.  I -- it does say that on the  
8 spreadsheet, that's correct, I believe that's the  
9 correct projection of the delivery date even though  
10 the delivery date on the delivery date field on the  
11 purchase order says, August 4th, 2010.

12           Q     Okay.  Now, I'm going to have you go back  
13 and keeping that page open, if you go to, again,  
14 Staff Cross Exhibit No. 10 and you look at the  
15 spreadsheet for Altec, if you find the corresponding  
16 PO, again, you'll see PO 107522, Release No. 8, the  
17 unit price is the same at 132,000, a piece for three  
18 aerial mount thingies.

19                     Would you agree that the expected  
20 delivery date is 12/27/2010 per the spreadsheet on  
21 Exhibit 32.2?

22           A     I see the expected delivery date

1 12/27/2010.

2 Q Okay. So we've got a delivery date of  
3 August 4, 2010, then we have a delivery date of  
4 December 27th, 2010, and then finally we have a  
5 delivery date of February 2011; is that correct? So  
6 three different delivery dates?

7 Would you agree that it appears as  
8 though this particular purchase order has three  
9 different delivery dates?

10 A In that documentation you went over, it  
11 would appear so.

12 Q Okay. Now, looking at the third purchase  
13 order in Exhibit 58.10, this would be Purchase Order  
14 107522, Release No. 10, you've got a purchase order  
15 for two aerial devices totaling 268,000 with a  
16 delivery date of August the 4th of 2010; correct?

17 A I see that. Yes.

18 Q On the corresponding spreadsheet, would you  
19 agree that it has a delivery date of February of  
20 2011?

21 A Yes.

22 Q Now, going back to the other spreadsheet

1 from 32.2, would you agree that the spreadsheet shows  
2 that it has an expected delivery date of 12/27/2010  
3 and then one on 2/15 of 20- -- it says 20100, but I'm  
4 assuming you mean 2011. So on the corresponding  
5 spreadsheet from 32.2 it says, Expected delivery date  
6 12/27/2002 and then 2/15/2011?

7 MR. BERNET: I'm sorry, which numbers are  
8 you -- which PO are you talking about?

9 MS. LIN: On the corresponding spreadsheet from  
10 32.2 for Release No. 10.

11 MR. BERNET: Oh. These aren't Bates labeled;  
12 right?

13 MS. LIN: Nope.

14 MR. BERNET: And which vendor was this again?

15 MS. LIN: Altec.

16 MR. BERNET: Okay. So you are comparing  
17 something on 32.2 to something on 58.10?

18 MS. LIN: And the spreadsheet on 58.10 and the  
19 corresponding PO on 58.10.

20 BY MS. LIN:

21 Q All I'm asking you to do is to verify  
22 that --

1           A     The release number?

2           Q     Release No. 10.

3           A     I'm sorry, I'm not seeing Release No. 10  
4 numbers match.

5           MR. BERNET: I'm sorry, so you are pointing  
6 to --

7           MS. LIN: I'm pointing to Release No. 10, the  
8 PO itself, the referenced --

9           MR. BERNET: And the PO is in which exhibit?

10          MS. LIN: The PO is in 58.10. You might not  
11 see the total price because the spreadsheet in 32.2  
12 only talks about unit price.

13          MR. BERNET: So what -- can you just give us  
14 the purchase order and the release number so we  
15 can...

16          MS. LIN: Sure. Purchase Order 107522, Release  
17 No. 10. So the PO itself shows a delivery date of  
18 August the 4th, 2010.

19          MR. BERNET: It states, Delivery date.

20          MS. LIN: It states, Delivery date, August 4,  
21 2010.

22                                   One spreadsheet talks about a February

1 2011 delivery date. Another spreadsheet talks about  
2 a delivery date of 12/27/2010.

3 BY MS. LIN:

4 Q Would you agree, subject to check, that  
5 there are at least three different delivery dates  
6 assigned to this PO and this purchase?

7 A Yes. I'm not sure of the date reference on  
8 when this -- these POs -- the dates when these POs  
9 were generated verses these, but I see the different  
10 delivery dates.

11 Q From this, I'm assuming that delivery dates  
12 are moving forward; would you agree?

13 A From which?

14 Q From the very original purchase order.

15 MR. BERNET: In which document?

16 MS. LIN: In any -- in this one in particular.  
17 In Release No. 10, the original delivery date was  
18 August the 4th of 2010.

19 MR. BERNET: Meaning, the -- you're saying on  
20 this document that's attached to 58.10 where it says,  
21 Delivery date --

22 MS. LIN: Yes.

1 MR. BERNET: -- it says, August 4th, 2010?

2 MS. LIN: Yes.

3 THE WITNESS: Right.

4 BY MS. LIN:

5 Q And that -- like you said, you've got  
6 projected delivery dates that get postponed or moved  
7 forward for whatever reason. I'm assuming that this  
8 is what this entails; correct? That delivery dates  
9 get moved forward or moved ahead in time?

10 A Going back to 58.10, the spreadsheet  
11 showing, I believe, the most current information that  
12 they're slated for 2011 delivery, notwithstanding  
13 certain dates on the actual POs themselves.

14 Q So now I'm going to have you look at again,  
15 58.10. It would be the fifth PO in this set of  
16 documents. It is Release No. 14. 10 items totaling  
17 502,000, approximately.

18 Do you have that one in front of you?

19 A Yes, I do.

20 Q Okay. So there's a delivery date, at least  
21 on the PO that says, October 20, 2010; correct?

22 A Yes, on the delivery date line, not on the

1 description.

2 Q Right. And in the description it says,  
3 2011 delivery; correct?

4 A Yes.

5 Q Can you explain to us why there's this  
6 discrepancy or what that means?

7 A If I can stay on 58.10 for purchase orders,  
8 my understanding -- which are purchase orders cut for  
9 fleet delivery in 2011, that the delivery date line  
10 represents the error on when these purchase orders  
11 were generated that the description of the  
12 delivery -- where that description says 2011 is the  
13 more accurate portrayal. I recognize some purchase  
14 orders don't even have that in the description; in  
15 which case, my understanding is that the spreadsheet  
16 in 58.10 would represent our current view of the  
17 fleet investments slated -- you know, and the  
18 deliv- -- and their associated deliveries as  
19 indicated on the spreadsheet in 20011.

20 Q Okay. So let me paraphrase that. So  
21 you're saying the delivery date on the PO represents  
22 the date that the PO is issued or is requested?

1           A     I mean, there's a printed date on the POs  
2 on the upper right-hand corner --

3           Q     Right. Okay. Which --

4           A     Which -- no, my point is that the delivery  
5 date on the purchase orders -- let me back up.

6                     The purchase orders for Exhibit 58.10,  
7 there are several delivery dates -- I'd have to  
8 review them all -- but where the delivery date in the  
9 delivery date row is an error.

10          Q     Okay.

11          A     And that the description is the more  
12 accurate portrayal of the anticipated delivery dates  
13 in the pro forma that's reflected in the surrebuttal  
14 that you referenced earlier on certain page numbers  
15 and that the spreadsheet in 58.10 does represent the  
16 most current -- our most current information around  
17 these delivery dates, which mainly match the  
18 descriptions of the purchase orders in 58.10, do not  
19 match the delivery date row because many of them are  
20 in error when this part- -- when these POs were  
21 printed.

22          Q     Okay. But you would agree that even from

1 your rebuttal testimony to your surrebuttal  
2 testimony, some dates have already moved forward;  
3 correct?

4 A When you say "forward," you mean --

5 Q The expected delivery date on the  
6 spreadsheets have changed already, so you've got --  
7 if you look at 58.10 and any -- let's take the Altec  
8 spreadsheet from 32.2, you've got expected delivery  
9 dates in December, in November of 2010 and then now  
10 you've got February, March, May of 2011 delivery  
11 dates.

12 Would you agree that since you're  
13 representing that these are the more accurate  
14 delivery dates, that -- would you agree that they've  
15 already changed from your rebuttal testimony to your  
16 surrebuttal testimony, the expected delivery dates of  
17 these particular fleet vehicles?

18 A To the extent that 32.2 represents a  
19 reflection of the sur- -- the rebuttal testimony  
20 view, I'm not exactly clear, but it is not my  
21 position that certain changes don't occur to some of  
22 the pro forma investments and what we endeavor in the

1 providing of the documentation is to show what those  
2 changes may be.

3                   So, yes, there were some changes in  
4 the fleet deliveries where some of the deliveries  
5 reflected 32.2 are currently listed and the most  
6 current view in surrebuttal as 2011 deliveries.

7           Q     Okay. What about amounts, do those change,  
8 the amounts of the POs change?

9                   So you said --

10           A     Subject to a more detailed review, I think  
11 it seemed like several of the amounts seem to line  
12 up; although, I'm not sure about Release 10, that was  
13 one that I -- at least I initially didn't see line  
14 up. But it seemed like several of the releases lined  
15 up and the amounts being equal; but, you know, I'd  
16 have to go through that again or subject to check.

17           Q     Would you agree, subject to check, at least  
18 one of them on 58.10 has changed from the  
19 corresponding PO in 32.2?

20           MR. BERNET: Can you refer us to which one?

21           MS. LIN: It would be PO 1075222 -- I'm sorry,  
22 I take that back.

1                   It's PO 1080073 in the amount of 2- --  
2 well, I should say in 58.10 it's 2.549 million and in  
3 32.2, it's a little bit more.

4           MR. BERNET: And that's PO 1060078?

5           MS. LIN: 1080073.

6           MR. BERNET: Oh, I need new glasses.

7           THE WITNESS: Is that in 58.10?

8 BY MS. LIN:

9           Q     It actually isn't provided in 58.10, but  
10 the reference to that PO is in the 58.10 spreadsheet;  
11 but if you look, it's 25 aerial devices ordered at a  
12 unit price of 102,000 in the total amount of 2.5  
13 million, again, that's per the purchase order. On  
14 the 58.10 spreadsheet, you'll see the corresponding  
15 PO, but the amount has changed to 2.549 million; but,  
16 again, you'll still see 25 aerial devices.

17          A     Yes, I see it. Unlike the other purchase  
18 orders, it had a per-unit-price comparison where this  
19 particular one is not provided.

20          Q     Right.

21          A     It's per unit of 102,924 --

22          Q     So subject to check.

1           A     -- .5 million -- and I don't know if  
2     there's additional vehicles under that particular one  
3     because there's not a release indicated in  
4     Exhibit 32.2.

5           Q     What does the release mean when you have  
6     all of these things with release 1 and 2 and 10 and  
7     15?

8           A     A release could mean another order for  
9     additional trucks under the -- or something -- a  
10    release could mean something additional under the  
11    same purchase order. Several releases could be  
12    additional equipment, accessories or additional  
13    trucks. I just don't know that from the review of  
14    that 1080073.

15          Q     And I'm just looking at the spreadsheet  
16    compared to the actual description in the PO. You've  
17    got 25 aerial devices mounted on 2011 Ford F-550  
18    chassis, which appears to look the same as the  
19    corresponding line on the 58.10 spreadsheet except  
20    again you've got a May delivery date?

21          A     Yes. I see the May delivery date on the  
22    spreadsheet versus the June 2011 delivery date in

1 Exhibit 32.2 which may reflect a discrepancy of a  
2 month. Although in the unit price times 25 vehicles  
3 at 103,000 a vehicle, it may be roughly the amount in  
4 1080073 on the spreadsheet. Again, I have to check  
5 the math.

6 Q Okay. Let's step back a little bit.

7 Now, in the 58.10 spreadsheet, you'll  
8 see the line item for this particular PO that I'm  
9 referring to, the -- again, 2.549 million. It says,  
10 May delivery, and then again it's the one that's at  
11 the very end of 58.10, 12 units at 152,000 each.

12 MR. BERNET: Which one are you referring to?

13 MS. LIN: I'm sorry. I'm confused. We don't  
14 have it. That's right.

15 JUDGE SAINSOT: Miss Lin, do you have a lot  
16 more questions?

17 MS. LIN: No, I don't. I don't.

18 JUDGE SAINSOT: And I don't mean it that way.  
19 What I mean is there's a time factor.

20 MS. LIN: It's all good.

21 BY MS. LIN:

22 Q Okay. I'm going to take you now to Line

1 277 of your rebuttal testimony. This is where you  
2 talk about --

3 A I'm sorry?

4 Q 277.

5 A Of rebuttal?

6 Q Yes.

7 A It's 32- --

8 Q Yes. It's where you talk about ComEd's  
9 schedule of plant additions and that they're  
10 rigorous, accurate and reliable; correct?

11 In fact, you've got a Subheading E at  
12 277?

13 A 277, I have it.

14 Q And you talk about plant additions being --  
15 the schedule that ComEd uses as being rigorous,  
16 accurate and reliable; correct?

17 A Yes.

18 Q Okay. So very painstakingly today, we've  
19 discussed a lot of movement between ITNs and  
20 categories, amounts going from one category to  
21 another, new here, dropped here, and then you've got  
22 some forward movement of delivery dates.

1                   Would you agree that we painstakingly  
2 discussed this this afternoon?

3           A     Yeah, I would agree we discussed some  
4 examples. I would disagree that they were --  
5 represented large changes to the plant.

6           Q     Okay. How would you classify them, if not  
7 large?

8           A     As mentioned in the original discussion  
9 around the data table of the drops and new, in  
10 aggregate, many of those movements are by design,  
11 which I mentioned, the capitalized overheads that  
12 allocate to the projects or the back office costs or  
13 certain movement of blanket ITNs that then get  
14 subsumed into or drawn down into specific jobs as per  
15 design, which can show up as dropped or new as well  
16 as the movement of the same work from one category to  
17 another, which would be just a category reclass.

18          Q     Okay.

19          A     And I do acknowledge some delivery date  
20 movement on the fleet.

21          Q     Okay. Most of them are movement forward;  
22 correct -- movement in time forward?

1           A     In our discussion when you say "forward,"  
2     it means later?

3           Q     Yes.  Later in time.

4           A     In the fleet discussion it appeared the  
5     comparison to 32.2 did result in some -- in the  
6     latest view, in surrebuttal some movement of the  
7     investments into 2011.

8           Q     Is it likely that other ComEd projects and  
9     plant additions would also move later in time such as  
10    fleet vehicles?

11          A     It's difficult to say at this time.  Our  
12    current view at this time in surrebuttal with the pro  
13    forma is this represents our best view right now and  
14    what work we've reasonably feel we will complete in  
15    the remaining pro forma period that's not measurable.

16          MS. LIN:  Okay.  I'm going to give you Staff  
17    Cross Exhibit 11 and 12 I think it is.

18                   (Whereupon, Staff Cross  
19                   Exhibit Nos. 11 and 12 were  
20                   marked for identification)

21          MR. BERNET:  Which one is which, Jennifer?

22          MS. LIN:  It doesn't matter.  We'll make 12.04,

1 11 and then 17.01, 12.

2 Now, I note before the Company freaks  
3 out, 12.04, the attachment is confidential. However,  
4 I have not attached the spreadsheet, I have only  
5 attached the summary, which is not confidential. So  
6 Cross Exhibit 11 is the Company's response to Data  
7 Request TEE 12.04.

8 BY MS. LIN:

9 Q The first page is a narrative and then the  
10 second page is a summary; correct? It's an update of  
11 pro forma ITN listings?

12 A Yes.

13 Q Okay.

14 A I'm sorry, checked against what you're  
15 calling Exhibit 11?

16 Q Yes.

17 A Okay. I have it.

18 MS. LIN: Now, again, I take into consideration  
19 these are DR responses sponsored by Mr. McMahan.  
20 However, because you referenced TEE 12.04 Attachment  
21 specifically in your testimony, that's why I'm asking  
22 you to take a look at it.

1                   Now, Staff Cross Exhibit 12 is the  
2   Company's response to Data Request TEE 17.01, which  
3   is an update to TEE 12.04.  So if you look at the  
4   narrative on the front and on the back, you've got  
5   the corresponding summary; correct?

6                   So we'll take the two spreadsheets  
7   together and we'll see pro forma updates from direct  
8   all the way to surrebuttal; would you agree?  And  
9   then it's categorized by categories.

10                  A    Yes.

11                  Q    Would you agree -- well, this isn't subject  
12   to check; but if you look at 12.04, you'll see that  
13   there's been a change of 7.698 million, correct,  
14   under total, under 12.04?

15                  A    Overall change?

16                  Q    Yes.  A net of 7.68 million?

17                  A    Yes, I do.  I see it.

18                  Q    Okay.  And then if you look at the other  
19   spreadsheet, going from rebuttal to surrebuttal,  
20   you'll see a net change of 13 million?

21                  A    Yes.

22                  Q    Would you agree, subject to check, if you

1 had a calculator in front of you, that between direct  
2 and going to surrebuttal, that there is a \$21 million  
3 change over the course of six months?

4 MR. BERNET: I'm going to object to the  
5 question. What six months are you talking about?

6 MS. LIN: From the end of June when your direct  
7 testimony was filed to when your surrebuttal  
8 testimony was filed, January 3rd, I believe 2011, so  
9 a little over six months.

10 MR. BERNET: I'm going to object to the  
11 characterization. When the pro forma was originally  
12 filed, it was filed based on forecasted data that was  
13 dated in January of 2010.

14 MS. LIN: Fair enough.

15 BY MS. LIN:

16 Q Between updates forecasted in January of  
17 2010 until January 3rd of 2011 when your surrebuttal  
18 testimony was filed, there's been a 20- -- at least a  
19 \$21 million change over -- that would be a 12-month  
20 period.

21 A I see the change from the million 30 to the  
22 billion 17.

1 MR. BERNET: We would stipulate to that.

2 MS. LIN: Okay.

3 BY MS. LIN:

4 Q Wouldn't you agree that this equates to  
5 some level of uncertainty about assets and the dollar  
6 amount of those assets and how they're changing all  
7 the time?

8 A Well, I would answer no. It's not my  
9 position that changes don't occur, you know, in our  
10 plan. We do, as a -- you know, as a major power  
11 company, we do have to adjust to some changes that  
12 occur on the grid, whether it's new business or  
13 whether at certain customer requests they're no  
14 longer required or a facility relocate where a  
15 municipality says that it's no longer needed.

16 However, the view at a certain point  
17 in time around our pro forma is based on the best  
18 available information, you know, that we have in  
19 terms of customer equipment, customer request or new  
20 business or relocation jobs that we may have to do  
21 among other investments and we endeavor to reflect  
22 that -- the most reasonable view of investments that

1 we're reasonably certain to complete in the forward  
2 period at -- those updates and I don't believe that  
3 the change represents uncertainty but more of a  
4 reflection of reality at points in time when certain  
5 work may no longer be required to a customer that is  
6 withdrawing their request.

7 Q And how about the forward movement in time  
8 that we were talking about earlier when you've got  
9 some delivery dates that might be moved ahead, or  
10 let's say, projected further out than originally  
11 anticipated, isn't that -- doesn't that rise to some  
12 level of uncertainty as to when assets will be placed  
13 into service?

14 A No. I don't think so. I mean, we do --  
15 like even with the fleet purchases, we endeavor to  
16 forecast delivery dates in line with our costs or how  
17 we had planned in our budget; but, you know, there  
18 may be other factors around, you know, factory  
19 schedules, amount of orders or delivery time for the  
20 factory, whether it's Altec or the -- or Ford  
21 chassis, that may impact delivery dates and then we  
22 would make adjustments.

1           Q     So when you have adjustments to delivery  
2     dates coupled with, you know, let's say, \$20 million  
3     and change over the course of a year, how can the  
4     Company give assurance to the Commission that  
5     their -- these investments will be made as scheduled  
6     if there's already so much movement, so much change  
7     within what we've talked about today?

8           A     Well, the assurance that, you know, I would  
9     give the Commission is our management processes. I  
10    mean, we have very rigorous management processes that  
11    manage our investments and our costs month over month  
12    and in many cases, weekly around our work plant and  
13    many of those forums vary into discussions of  
14    approvals, all at the executive level, many at the  
15    senior executive level, to assure the Commission that  
16    we manage these -- we take these investments very  
17    seriously and we don't approve any changes unless  
18    they're in line, you know, with certain priorities  
19    that might emerge on the system at a given point in  
20    time.

21                           On our overall variance through the  
22    period that originally reflected a forecast view in

1 January of 2010, all the way to a surrebuttal view  
2 where the pro forma, you know, is a 2 percent --  
3 overall 2 percent movement in that view, which that  
4 is a -- which, my view, is that that is a, you know,  
5 very accurate track record of investment accuracy.

6 Q And is it likely that these numbers will  
7 continue to change even as the ALJs make their  
8 decisions on pro forma plant additions and when the  
9 Commission ultimately decides on giving ComEd the  
10 money that it's requested for plant additions?

11 MR. BERNET: Can we be clear which numbers you  
12 are referring to?

13 MS. LIN: Let's say the total number, the 20  
14 million number in all of the categories for pro forma  
15 plant additions.

16 MR. BERNET: I object to the form of the  
17 question. Multiple questions in one.

18 MS. LIN: I will do them one by one then.

19 BY MS. LIN:

20 Q Looking at all of the pro forma plant  
21 additions, the fact that there's been an update  
22 between January 2010 and January 2011 in the amount

1 of \$20 million -- actually, a little bit more than  
2 \$20 million, isn't it likely that there will be more  
3 change by the time the ALJs make their decisions  
4 regarding pro forma plant additions and then another  
5 change when the Commission makes their decision --  
6 its decision on pro forma plant additions?

7 MR. BERNET: What dates are you talking about?

8 MS. LIN: The ALJs make their -- I think  
9 they'll be making their decisions in the spring and  
10 then there's a final order that needs to come out in  
11 May of 2011.

12 THE WITNESS: It's not my position to the  
13 Commission that we can't -- we may not have changes.  
14 The changes do occur on a major power grid like ComEd  
15 serving Chicago and the metropolitan area. What I  
16 can tell you is that our current view right now does  
17 reflect actuals that have occurred, you know, through  
18 November of 2010 and a look forward in a closer  
19 window in time, so I can assure you that there may be  
20 changes. But this view right now represents, you  
21 know, our best view of -- and we're reasonably  
22 certain that these investments that we had forecasted

1 through June of 2011 are reasonably certain to occur  
2 and with -- would be known and measurable. If there  
3 are changes, you know, we would manage those changes.  
4 Could new business jobs fall off? The candid answer  
5 is, that's possible. But could new jobs come in or a  
6 particular storm activity or other additions come in?  
7 That also could occur and we would manage that within  
8 our overall process.

9 BY MS. LIN:

10 Q Did your view at rebuttal and at  
11 surrebuttal represent the best view that you just  
12 referred to?

13 A Our view with surrebuttal represents our  
14 most current view reflecting investments that have  
15 already been made and we respectfully feel are used  
16 and useful serving customers through November of 2010  
17 and what we believe right now is reasonably certain  
18 to occur on the go-forward period through June of  
19 2011 and that represents our most current view, which  
20 we are reasonably certain that that will occur.

21 Q Which has already changed.

22 Would you concede that your best view

1 has already changed from --

2 MR. BERNET: I'm going to object. Go ahead.

3 Sorry.

4 BY MS. LIN:

5 Q -- rebuttal to surrebuttal?

6 The Company's best view has changed?

7 A Yeah, I would certainly -- I would admit  
8 that there was a change from rebuttal to surrebuttal  
9 to reflect -- again, every time there's a movement in  
10 time, we want to reflect our best -- our best view of  
11 investments that will be made, you know, to our  
12 customers for the Commission.

13 JUDGE SAINSBOT: Mr. Donnelly, that's really a  
14 "yes" or "no" question.

15 THE WITNESS: Yes, it does represent our best  
16 view.

17 MS. LIN: Okay. I don't have any more  
18 questions. I do, however -- again, I'm sure that we  
19 can discuss this later; but I will be moving to  
20 strike the first and the last purchase order that the  
21 Company stipulated to and admitted to that it had --  
22 those particular purchase orders had not been

1 previously provided in rebuttal testimony or in  
2 discovery, so I will be moving to strike those two  
3 exhibits -- those two purchase orders.

4 JUDGE SAINSOT: Tomorrow; right?

5 MS. LIN: Excuse me?

6 JUDGE SAINSOT: Tomorrow?

7 MS. LIN: We can do it tomorrow.

8 MR. BERNET: Wait. Let me make sure I'm clear  
9 what you're moving to strike. So can you explain  
10 that to me?

11 MS. LIN: If you look at Staff Cross Exhibit  
12 No. 9, since this was attached to Mr. Donnelly's  
13 testimony as an exhibit, Staff would be moving to  
14 strike the first purchase order that would be 107522,  
15 Release No. 15.

16 MR. BERNET: Hold on. Hold on.

17 JUDGE SAINSOT: She's doing that tomorrow.  
18 Remember that.

19 MR. BERNET: Pardon me?

20 JUDGE SAINSOT: She's doing that tomorrow.

21 MR. BERNET: Well, I'd just like -- I'd like to  
22 look because I might have some redirect.

1 JUDGE SAINSOT: I understand.

2 MR. BERNET: Okay. So --

3 MS. LIN: So it will be the first Purchase  
4 Order in Staff Cross Exhibit No. 9, which is Purchase  
5 Order Release No. 15 in the amount of 1.866 million  
6 for 12 things.

7 MR. BERNET: And --

8 MS. LIN: Then the last purchase order, which  
9 is Purchase Order 128612, Release 91 in the amount of  
10 1.825 million to Chicago International Trucks. So  
11 Staff would be moving to strike these two purchase  
12 orders and the references to those purchase orders in  
13 the spreadsheet because -- since they were never  
14 tendered as part of either discovery or tendered in  
15 32.2 in Mr. Donnelly's rebuttal testimony.

16 MR. BERNET: But they were attached to  
17 testimony and -- I mean --

18 JUDGE SAINSOT: She's moving tomorrow.

19 MR. BERNET: Oh, okay. So I can respond  
20 tomorrow?

21 JUDGE SAINSOT: Right.

22 MR. BERNET: Okay. No problem. I do have some

1 redirect.

2 JUDGE SAINSOT: Okay.

3 REDIRECT EXAMINATION

4 BY

5 MR. BERNET:

6 Q Mr. Donnelly, turning your attention to  
7 58.10, the spreadsheet on the first page and the  
8 dollar amounts, in particular, can you tell me,  
9 ballpark, what those number total to, just a  
10 ballpark.

11 A 7 million or so.

12 Q And the total pro forma plant additions  
13 that ComEd is seeking to recover in this case are  
14 about \$1.017 billion?

15 A That's correct.

16 Q And is it your recollection that the amount  
17 in dispute with Staff, which is primarily what the  
18 2011 investments that ComEd plans to make, is about  
19 300 million?

20 A Yes.

21 Q Now, directing your attention to Staff  
22 Cross Exhibit 9 and the purchase orders, are those

1 purchase orders printed from a computer system?

2 A Yeah, that's my -- well, yes, that's my  
3 understanding.

4 Q And that's what impacts the line that says  
5 Delivery Date on those invoices?

6 A We're -- you know, I may not have relabeled  
7 my exhibit. Staff Cross Exhibit No. 9 is really  
8 ComEd Exhibit 58.10?

9 Q Yes.

10 A Okay. Thank you.

11 My under -- my understanding of these  
12 particular purchase orders is that the delivery dates  
13 like the ones you mentioned are a more accurate  
14 depiction of the delivery dates are reflected on the  
15 spreadsheet in 58.10 that align with the surrebuttal  
16 view of the investments to go -- to go in fleet.

17 MS. LIN: Now, Rick, are you talking about  
18 delivery date or printed date?

19 MR. BERNET: I'm talking about the -- I'm  
20 talking about the date on the PO that's on the bottom  
21 portion of the POs that in darker black says,  
22 Delivery Date --

1 MS. LIN: Okay.

2 MR. BERNET: -- that's what I'm talking about.

3 MS. LIN: Okay.

4 BY MR. BERNET:

5 Q Directing your attention to Staff Cross  
6 Exhibit 10 and more specifically the last page of  
7 that cross exhibit.

8 A Yes.

9 Q That's -- and then I want you to compare  
10 the first page of the spreadsheet from 58.10 which  
11 was attached to your testimony.

12 Is that the purchase order that is  
13 reflected on the second to the last line of 58.10?

14 A Yes.

15 MS. LIN: One point of clarification. However  
16 with a change in price, agree, and delivery dates?

17 MR. BERNET: Wait a minute. This is redirect.  
18 You can come back and recross.

19 MS. LIN: Okay.

20 BY MR. BERNET:

21 Q Mr. Donnelly, is it fair to say you're the  
22 senior-most operations executive at Commonwealth

1 Edison?

2 A Yes.

3 Q How many people report to you?

4 A Just under 4,000.

5 MR. BERNET: Nothing further.

6 JUDGE SAINSBOT: Any recross?

7 RECROSS-EXAMINATION

8 BY

9 MS. LIN:

10 Q Just going back to that second to last  
11 question that Mr. Bernet asked you about. The PO and  
12 the spreadsheet, they are the same PO. However,  
13 would you agree that the price is changed and the  
14 delivery date is changed?

15 A The unit price -- the unit price in 32.2,  
16 yes, I would agree there's a slight ch- -- a slight  
17 change in price as evidenced by the purchase order in  
18 32.2, a little over 2.5 million -- actually, 2.573  
19 and the spreadsheet number on Exhibit 58.10 at 2.549.

20 MS. LIN: Thank you.

21

22

1 RE-REDIRECT EXAMINATION

2 BY

3 MR. BERNET:

4 Q Mr. Donnelly, every purchase order that  
5 we've discussed this afternoon relates to a purchase  
6 of a vehicle that will occur between -- during the  
7 pro forma period; is that right?

8 A Correct.

9 MR. BERNET: That's it.

10 JUDGE SAINSBOT: Is there anybody else?

11 (No response.)

12 Just checking.

13 Mr. Donnelly, you're excused. Thank  
14 you very much.

15 THE WITNESS: Thank you, your Honor.

16 MS. LIN: Before I forget, I would like to at  
17 least -- let me get this on the record so I don't  
18 forget it. Knowing me, I'll sneak it away.

19 I am -- Staff is only looking to enter  
20 into evidence Staff Cross Exhibits 8, 11 and 12 and,  
21 again, 8, subject to check. If the Company needs to  
22 check that, the data has not been manipulated.

1 MR. BERNET: Okay. So 8?

2 MS. LIN: 8, 11 and 12, which are the two -- 11  
3 and 12 being the two --

4 MR. BERNET: Responses to the DRs?

5 MS. LIN: Correct.

6 MR. BERNET: And then -- well, Staff Exhibit 9  
7 is the same thing as what -- Staff Cross Exhibit 9 is  
8 the same thing as 58.10; right?

9 MS. LIN: Right. So I don't need to enter that  
10 one in and 10 is 32.2 -- well, are you filing 32.2 on  
11 e-Docket?

12 MR. BERNET: No, you know what I'd like to do  
13 is, you know, I said we'd stipulate that this 32.2  
14 was not -- I don't remember what the stipulation was,  
15 but I'll make it again tomorrow. I'd just like to  
16 double-check --

17 MS. LIN: Okay.

18 MR. BERNET: -- that 10 is in 32.2.

19 MS. LIN: Okay.

20 MR. BERNET: And then you're going to move to  
21 strike the two POs that we talked about?

22 MS. LIN: Tomorrow, yes.

1 MR. BERNET: Okay.

2 MS. LIN: And then if you could check, are you  
3 all putting -- are y'all putting in 32.2?

4 MR. BERNET: 32.2 is in already. 32.2 --

5 MS. LIN: The CDs.

6 MR. BERNET: It's already in evidence.

7 JUDGE SAINCOT: Not in CD form, though.

8 MR. BERNET: I assume it was filled with the  
9 Clerk's Office.

10 MR. RIPPIC: Your Honors --

11 MR. BERNET: I think you're right, your Honor.  
12 I think we did not have the disk with the -- with  
13 what I submitted today, so we'll get three of those  
14 for you for tomorrow.

15 JUDGE SAINCOT: Okay. We can do that, they'll  
16 do something in cyberspace with it.

17 MR. RIPPIC: The Clerk's Office, for the  
18 record, was provided a physical record of the disk at  
19 the time that the narrative testimony was  
20 electronically on e-Docket, but we'll provide  
21 additional copies of the -- I don't think --

22 MS. LIN: It is the corrected 32.

1           MR. BERNET: That's right. That's right. And  
2 no objection to 8, 10 and 11 -- I'm sorry -- 8, 11  
3 and 12.

4           JUDGE SAINSOT: Can we do this all at once so  
5 that I don't have little pieces of paper all over the  
6 place?

7           MS. LIN: Yes.

8           MR. BERNET: So you'll just -- hold off -- hold  
9 off until tomorrow?

10          MS. LIN: I'll stamp it somewhere where I can  
11 remember.

12          JUDGE SAINSOT: Mr. Borovik, do you want to put  
13 AG Cross Exhibit 5 into the record?

14          MR. BOROVIK: Yes, please. I would like to put  
15 that into the record.

16          JUDGE SAINSOT: I have it here. It is ComEd's  
17 response to AG 13.01 and it's -- that's the first  
18 page and the second page is Page 1 of a breakout of  
19 jurisdictional plant additions and removal costs for  
20 2010 Quarter 1 -- Quarter 1 and 2 of 2011.

21                           Any objection?

22                           (No response.)

1                   Hearing none, your motion is granted,  
2 Counsel, and --

3           MR. BERNET: No objection.

4           JUDGE SAINSOT: -- AG Cross Exhibit 5 is  
5 entered into evidence.

6                   (Whereupon, AG Cross  
7 Exhibit No. 5 was  
8 admitted into evidence as  
9 of this date.)

10           Now, can we talk about -- is  
11 Mr. Heintz -- is this the schedule? We're doing  
12 Mr. Heintz?

13           MR. REED: Yes, your Honor. Mr. Heintz has to  
14 go today. He's on a plane back to D.C. this evening.  
15 I don't know whether or not the time periods for  
16 cross-examination for Mr. Heintz has changed. I  
17 would defer to Counsel who are going to cross him,  
18 he's got to go on this evening.

19           JUDGE SAINSOT: Okay. Who -- do you have some  
20 estimate of what's involved with Mr. Heintz, the  
21 length of time?

22           MR. RIPPIE: The current estimate for

1 Mr. Heintz is sadly one hour and 55 minutes which  
2 consists of 30 minutes of cross from REACT; 5 from  
3 Metra; 30 from IIEC, 5 from CTA; 10 from the  
4 Commercial Group; 15 from the City of Chicago, and 20  
5 from the Attorney General.

6 JUDGE SAINSOT: All right. Let's try and speed  
7 that up.

8 MR. REED: It's my understanding, your Honor,  
9 that some of the changes as just announced by  
10 Mr. Rippie have been modified.

11 MR. RIPPIE: That's as of this morning.

12 JUDGE SAINSOT: Right. Okay. Good. I think  
13 we also ought to take a break now.

14 JUDGE DOLAN: 5 minutes.

15 (Recess taken.)

16

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18 (Change of reporters.)

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(Whereupon, there  
was a change of reporters.)

JUDGE DOLAN: Back on the record.

MR. REED: Good evening, your Honors. G.  
Darryl Reed of the law firm of Sidley Austin, LLP, on  
behalf of the Petitioner, Commonwealth Edison  
Company.

We are here with our next and,  
hopefully, final witness of the day, Mr. Alan Heintz.

Would you please state your name,  
spelling your last name for the record.

THE WITNESS: Alan C. Heintz, H-e-i-n-t-z.

MR. REED: Now, you have a number of documents  
before you --

JUDGE SAINCOT: Can we swear him in first.

MR. REED: Yes, your Honor.

(Witness sworn.)

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ALAN C. HEINTZ,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY

MR. REED:

Q You have before you a number of documents but I will identify them for purposes of the record.

First, we will start with your direct testimony, which consists of three documents, the first being Commonwealth Edison Exhibit 15.0 revised filed on e-docket on the August 27th of 2010, consisting of a cover sheet, issues and major conclusions, table of contents, and 18 pages of text in question-and-answer format.

The second document constituting your direct testimony in this proceeding is Commonwealth Exhibit 15.1 revised, which is the embedded cost-of-service study or the ECOSS, and the third document is Commonwealth Edison 15.2 revised, consisting of a two-page document depicting class rates of return at present and proposed rates.

1                   Have I cited the contents of your  
2 direct testimony so far, Mr. Heintz?

3           A     Yes, you have.

4           Q     Moving next, we have the documents  
5 designated the supplemental direct testimony filed on  
6 e-docket also on August 7 of 2010, consisting of  
7 Commonwealth Edison Exhibit 22.0 revised, a cover  
8 sheet and four pages of text in question-and-answer  
9 format. And Commonwealth Edison Exhibit 22.1  
10 revised, the ECOSSE modified to improve a new primary  
11 voltage delivery class.

12                   Have I correctly cited the  
13 supplemental direct testimony which you are  
14 sponsoring in this proceeding?

15          A     Yes, you have.

16          Q     Moving on to the rebuttal testimony you  
17 filed February 8, 2010 consisting of five documents.  
18 The first designated Commonwealth Edison Exhibit 51.0  
19 consisting of a cover sheet, issues and major  
20 conclusions, table of contents, and nine pages of  
21 text in question-and-answer format.

22                   The second document designated

1 Commonwealth Edison Exhibit 51.1, an ECOSS, which is  
2 a revised version of ComEd Exhibit 15.1, Commonwealth  
3 Edison's proposed ECOSS.

4 The third document, Commonwealth  
5 Edison 51.2, an ECOSS, which is a revised version of  
6 ComEd Exhibit 22.2, an exemplar ECOSS.

7 Document No. 4, Commonwealth Edison  
8 No. 51.3, an ECOSS which is an alternative exemplar  
9 ECOSS submitted in response to an IIEC Data Request  
10 7.01.

11 And the fifth document which  
12 constitutes a rebuttal testimony in this proceeding  
13 designated as Commonwealth Edison 51.4 a three-page  
14 document depicting a distribution of a revenue  
15 requirement among classes occasioned by the various  
16 versions of ECOSS.

17 Have I correctly cited the rebuttal  
18 testimony that you're sponsoring in this proceeding?

19 A Yes, you have.

20 Q And, finally, the surrebuttal testimony  
21 filed on e-docket on January 5, 2011, consisting of  
22 five documents; the first designated Commonwealth

1 Edison Exhibit 75.0, cover sheet, issues and major  
2 conclusions, and four pages of text in  
3 question-and-answer format.

4 The second document Commonwealth  
5 Edison Exhibit 75.1, an ECOSS, which is a revised  
6 version of ComEd Exhibit 51.1, ComEd's preferred  
7 ECOSS.

8 Document No. 3, ComEd Exhibit 75.2,  
9 which is a revised ECOSS version of ComEd 51.2 and is  
10 ComEd's preferred exemplar ECOSS.

11 The fourth document designated  
12 Commonwealth Edison's Exhibit 75.3, which is a  
13 revised version of Commonwealth Edison Exhibit 51.2,  
14 ComEd's alternative exemplar ECOSS.

15 And, finally, Commonwealth Edison  
16 Exhibit 75.4, which is a three-page document  
17 summarizing the distribution of the revenue  
18 requirement among classes occasioned by the various  
19 versions of ECOSS versus the three versions of the  
20 ECOSS attached to the rebuttal testimony.

21 Do these documents constitute the  
22 surrebuttal testimony that you're sponsoring in this

1 proceeding?

2 A I don't know if I misheard you, but, yes,  
3 with the exception of 75.3 is a revision of 51.3.

4 Q I have a typo on my page.

5 With that correction, do these  
6 documents represent the surrebuttal testimony that  
7 you're offering in this proceeding?

8 A Yes, they do.

9 Q If I were to ask you the same questions as  
10 set forth in the documents that I've just discussed  
11 with you, would there be any changes, corrections or  
12 deletions to these documents?

13 A No, sir.

14 Q Do these documents constitute the testimony  
15 that you're offering in this proceeding?

16 A Yes, they do.

17 Q These documents were also prepared by you  
18 or under your direction?

19 A Yes.

20 MR. REED: We now move for the admission of the  
21 documents, and I can go through the documents again.  
22 I just ask for the documents I just cited on the

1 record for admittance into the record and tender the  
2 witness, Mr. Alan Heintz, for cross-examination in  
3 this proceeding.

4 JUDGE DOLAN: Is there any objection?

5 (No response.)

6 JUDGE DOLAN: Then just correct me if I'm  
7 wrong, I will try to read them.

8 15.0 revised, 15.1, 15.2, .2.0  
9 revised, 22.1 revised, 51, 51.1 revised --

10 MR. RIPPIE: No.

11 JUDGE DOLAN: No, not revised. Okay.

12 51.2, 51.3, 51.4 and then 75, 75.1,  
13 75.2, 75.3 and 75.4 will be admitted into the record.

14 (Whereupon, ComEd Exhibit

15 Nos. 51.2, 51.3, 51.4, 75,

16 75.1, 75.2, 75.3 and 75.4 were

17 admitted into evidence.)

18 MR. REED: The only correction I would make,  
19 your Honor, is 15.1 and 15.2 are both revised as  
20 well.

21 JUDGE DOLAN: All right. 15.1 revised and 15.2  
22 revised.

1 MR. REED: That is correct, your Honor.

2 JUDGE DOLAN: Thank you. They will be admitted  
3 into the record.

4 And, Mr. Jolly, are you ready for  
5 cross-examination.

6 MR. JOLLY: I suppose. We'll find out.

7 CROSS EXAMINATION

8 BY

9 MR. JOLLY:

10 Q I just have a few questions. Good evening,  
11 Mr. Heintz. My name is Ron Jolly. I represent the  
12 City of Chicago in this matter.

13 A Hi. How are you doing?

14 Q I'm all right. How are you?

15 A Good. Thank you.

16 Q Can you turn to Page 7 of your direct  
17 testimony, Lines 139 through 140.

18 A You're referring to the supplemental  
19 direct?

20 Q No, your revised direct, Exhibit 15.0?

21 A Yes, I am sorry.

22 And the page number?

1 Q 7, Lines 139 and 140.

2 Are you there?

3 A I am there.

4 Q At that point in your testimony, you state  
5 that in preparing your ECOSS that distribution  
6 substations and primary lines were allocated using  
7 the coincident peak method; is that correct?

8 A That's correct.

9 Q Are you aware of any distribution  
10 substations where primary lines on the ComEd system  
11 that are designated to solely provide service to  
12 street lighting customers?

13 A No, I don't.

14 Q You're not aware of that?

15 A No.

16 MR. JOLLY: Okay. That's all I have.

17 JUDGE SAINSOT: Any redirect?

18 (No response.)

19 JUDGE DOLAN: Who is ready next?

20

21

22

1 CROSS EXAMINATION

2 BY

3 MS. LUSSON:

4 Q Good evening, Mr. Heintz. My name is Karen  
5 Lusson. I'm from the Illinois Attorney General's  
6 Office. I just have a few questions. I basically  
7 want to go through the costs -- reference the final  
8 surrebuttal cost-of-service studies that you have  
9 filed to make sure that -- and talk about what's  
10 happened with residential cost-of-service from the  
11 beginning of this case to the end of the case.

12 It's correct that you prepared several  
13 iterations of your cost-of-service study. And ComEd  
14 Exhibit 75.1, 75.2 and 75.3 are your final  
15 cost-of-service studies that were provided in  
16 surrebuttal; is that right?

17 A That is correct.

18 Q Then in Exhibit 75.4, you summarize the  
19 results of -- or the position of the Company at this  
20 point, is that right, on cost of service?

21 A It provides a summary of the differences  
22 between the three costs of service, yes.

1           Q     Again, I would like to focus on the  
2 residential classes only.

3                     ComEd's proposed single-family and  
4 multi-family classes specifically.

5                     Now, if you look at Exhibit 75.4,  
6 would you agree that regardless of which of your  
7 three final studies are used, the cost to serve  
8 single-family residential customers is between 990  
9 million and 991 million?

10           A     With rounding, yes.

11           Q     And would you agree also that regardless of  
12 which of your final studies is used from surrebuttal,  
13 the cost to serve residential multi-family customers  
14 is between 289 and 290 million? Again, looking at  
15 Line 3, I believe.

16                     JUDGE SAINSON: What page is this on?

17                     MS. LUSSON: This is Exhibit 75.4, which is a  
18 comparison of the cost of service between rebuttal  
19 and surrebuttal.

20                     THE WITNESS: What is the question?

21 BY MS. LUSSON:

22           Q     Regardless of which of your final studies

1 is used, the cost to serve residential multi-family  
2 customers is between 289 and 290 million? And,  
3 again, that's comparing Line 3 for these two classes  
4 on each of the three pages.

5 A Yes, again, with rounding to the nearest  
6 million.

7 Q Would you also agree these dollar amounts  
8 were somewhat lower than they were when ComEd made  
9 its filing to reflect the Commission's rate design  
10 order early in this case?

11 Specifically, what I'm referencing is  
12 ComEd Exhibit 22.1 where you showed the total cost to  
13 serve single-family residential customers was 992  
14 million? I think it's Schedule 2A, Page 11 of 16 on  
15 that exhibit.

16 A I am trying to get to the page.

17 Q So the question again is that on that  
18 exhibit, 22.1, you showed the total cost to serve  
19 single-family residential customers was 992 million?

20 A Yes.

21 Q Then in the cost to serve multi-family  
22 residential customers in that same exhibit was just

1 under 294 million; is that right?

2 A That is correct.

3 Q So all of the changes in your  
4 cost-of-service study since then have the effect of  
5 reducing the cost allocated to single-family  
6 residential customers by about 3 million, would you  
7 agree, taking that --

8 A Rounding in millions, yes.

9 Q And the effect of changes in your  
10 cost-of-service studies have the effect of reducing  
11 the costs allocated to multi-family residential  
12 customers by about 4 million?

13 A That is correct.

14 Q And, finally, I want to show you a copy of  
15 AG/CUB Exhibit 6.01. This is an attachment to  
16 Mr. Rubin's testimony. So it will be in the record,  
17 so I don't know if you want me to mark it. If so,  
18 it's AG Cross-Exhibit 6, I think.

19 MR. RIPPIE: We haven't been separately marking  
20 exhibits that are going to come in.

21 MS. LUSSON: Okay.

22 MR. RIPPIE: But just to be safe, should

1 anybody ever take appeal of this case, it's one less  
2 tree to kill.

3 MS. LUSSON: Agreed.

4 BY MS. LUSSON:

5 Q Now, AG/CUB Exhibit 6.01 was -- first,  
6 let's go back to the original cost-of-service study  
7 that you filed.

8 Now, that original cost-of-service  
9 study didn't include the findings from the rate  
10 design Docket 08-0572; is that right?

11 A It had a breakout of the primary and  
12 secondaries. It had the uncollectibles being  
13 allocated uniformly and residential.

14 Q But when ComEd revised its cost-of-service  
15 study, I think that was filed in August, it  
16 incorporated all the Commission's finding at that  
17 point; is that right?

18 A If you're referring to ComEd Exhibit  
19 22.1 --

20 Q Yes.

21 A -- which has a primary customer cost,

22 (Nodding head up and down.)

1           Q     We discussed earlier, that reduced the cost  
2 of serving residential customers by about 3.6 million  
3 that reflected those numbers?

4           A     I thought we were the discussing 33  
5 million.

6           JUDGE SAINSOT:   You need to speak up,  
7 Mr. Heintz.

8           THE WITNESS:   Oh, sorry.

9                         I know we were having the discussion  
10 of 33.9, but the math differs between the two numbers  
11 we did discuss is approximately 33 million.

12          BY MS. LUSSON:

13           Q     Okay. With that clarification -- now, when  
14 the Company filed its two initial studies, they  
15 reduced the number of residential subclasses to two;  
16 is that correct?

17           A     That is correct.

18           Q     Now, in discovery ComEd provided the  
19 breakdown of original four subclasses that retained  
20 the original for residential subclasses in response  
21 to discovery from our office; is that correct?

22           A     I believe it was AG 4.02.

1           Q     And, in fact, the exhibit that I've handed  
2     you, AG/CUB Exhibit 6.01, which is attached to  
3     Mr. Rubin's testimony, that is a representation or  
4     that is the Company's response to that request.  
5     Would you agree?

6           A     I would have to review it.

7           Q     If you want to take a minute just to look  
8     at it.

9           A     And I believe it's Attachment 2 to that  
10    data request.

11          Q     Exactly.  AG 4.02, Attachment 2.

12           JUDGE SAINSOT:  What does this do, Ms. Lusson,  
13    re-break down into the four preexisting residential  
14    categories?

15           MS. LUSSON:  Yes, that's my understanding.  I  
16    just want to make sure that is the case with  
17    Mr. Heintz.

18           THE WITNESS:  Checking the summary numbers,  
19    they concur.

20    BY MS. LUSSON:

21           Q     So then, essentially, this document  
22    provided by the Company and attached to Mr. Rubin's

1 testimony represents the cost of service if those  
2 four residential customer classes are retained; is  
3 that correct?

4 A Yes. It answers the question in AG 4.02  
5 requesting a breakout to four residential customer  
6 classes.

7 MS. LUSSON: Thank you, Mr. Heintz. I have no  
8 further questions.

9 JUDGE DOLAN: Mr. Jenkins, you're going to go  
10 next?

11 MS. LUSSON: Your Honors, would you indulge me.  
12 May I ask one more question?

13 JUDGE DOLAN: Go ahead.

14 FURTHER CROSS EXAMINATION

15 BY

16 MS. LUSSON:

17 Q Going back to the beginning of our  
18 discussion and the end of our discussion in this  
19 exhibit, would you agree that the cost of serving the  
20 residential class through all of the iterations of  
21 the cost-of-service study is right about where it was  
22 in the beginning of the case, give or take a few

1 million we discussed?

2 A Given that we discussed 33 million, that's  
3 more than a few.

4 Q And that was a reduction in the cost of  
5 service to the residential class?

6 A Yes.

7 Q Okay. And let me clarify, too, then.

8 That 33.6 million reduction came when  
9 the Company filed its revised cost-of-service study  
10 in August, is that right, reflecting all the changes  
11 from the rate design order?

12 A Can you give me the Exhibit No?

13 Q That would be 22.1.

14 A 22.1 has for single-family 932 million and  
15 for multi-family 275 million.

16 Q And from your iteration in 22.1 through the  
17 surrebuttal testimony, would you agree that the cost  
18 of serving the residential class is about where  
19 it was from 22.1; that is, it has not changed that  
20 much --

21 A There's been no material change.

22 Q Thank you. And that's both for

1 single-family and multi-family?

2 A That is correct.

3 MS. LUSSON: Thank you.

4 CROSS EXAMINATION

5 BY

6 MR. JENKINS:

7 Q Good afternoon, Mr. Heintz. Alan Jenkins  
8 for The Commercial Group.

9 Can you please turn to your Exhibit  
10 7.1. And if I could refer you to Schedule 2A,  
11 Page 5.

12 Let me know when you're there.

13 A I'm there

14 Q There's a number of allocators listed along  
15 with facility types, and if I understand correctly,  
16 what you tried to do with these allocators is to  
17 represent how much various facility types are used by  
18 individual classes?

19 A How much those -- so a measure of use of  
20 those facilities by the different various classes,  
21 yes.

22 Q And on Line 81, for example, the line

1 Primary Distribution Lines, and if you go to the  
2 column, Large Load, I see you have a sign the large  
3 load class, about \$350 million in primary  
4 distribution line costs, correct?

5 A That is correct.

6 Q And that figure represents roughly  
7 10 percent of the total primary distribution line  
8 costs?

9 A Just a little less, yes.

10 Q Now, if you look at Line 84, under  
11 Services -- and can you first describe what the term  
12 "services" includes.

13 A Yes. Services are between the customer  
14 premises. It would like the service drop to your  
15 house comes off of the line and goes to your house,  
16 it's the last part of the line that comes in that's  
17 related to the customer.

18 Q I see for the large load classes, which, of  
19 course, would not have any houses in them, there's a  
20 sign about roughly \$1 million of costs, correct?

21 A That is correct. And, yes, the large load  
22 would have houses, but they would have service drops.

1           JUDGE SAINCOT: Mr. Jenkins, what schedule are  
2 we on?

3           MR. JENKINS: We are on Schedule 2A, Exhibit  
4 75.1, Page 5.

5           JUDGE SAINCOT: Thanks.

6           MR. JENKINS: Mr. Heintz was very quick to find  
7 it.

8 BY MR. JENKINS:

9           Q You don't have all this stuff memorized, do  
10 you?

11          A No, sir. It's actually very hard to  
12 retrain yourself back to paper when you're doing it  
13 on spreadsheets all the time.

14          Q That figure, the \$1 million figure you  
15 mentioned on Line 84 for the large load class, that  
16 represents roughly a quarter of 1 percent of the  
17 total system services cost, right?

18          A It's 1.1 million out of 465 million.

19          Q And that is because those customers bypass  
20 the secondary distribution line system largely and  
21 serve directly from ComEd transformers or electric  
22 service stations, correct?

1           A     These are services, so I believe they are  
2     from the ComEd pole to the customer. And what the  
3     voltage is is related to the class size, and it's not  
4     primary, secondary.

5                     Primary and secondary are up above.  
6     Like on Line 82 would be secondary.

7           Q     Right.

8                     And I'm just getting at the reason for  
9     the fairly low figures. That's the size of the Line  
10    there?

11          A     We take for each of the customer classes  
12    the cost of the services and then allocate those to  
13    the class. It is much more akin to a -- it's a  
14    weighted average cost of the service drop to the  
15    customer class, so this has nothing to do with  
16    secondary/primary split.

17                     This is drop, which is neither  
18    secondary or primary.

19          Q     Right.

20                     Would you describe the weighted  
21    services allocator. How do you come up with that?

22          A     Yes.

1                   There is a cost of services for people  
2     in a class. And the service, for example, to your  
3     house may be a, say, a 30-foot certain gauged wire  
4     that has a certain cost.

5                   For a large load, it may be a much  
6     longer or shorter line, probably bigger gauge and  
7     there is a cost, so that weighted cost is used to  
8     allocate the services.

9           Q     Okay.

10           MR. JENKINS: Let me just check a second. I  
11     think that might do it.

12                   Hopefully, we will tie that to a later  
13     witness. That's all I have. Thank you.

14           THE WITNESS: Thank you.

15                   CROSS EXAMINATION

16                   BY

17                   MR. BALOUGH:

18           Q     Good evening.

19           A     Good evening.

20           Q     My name is Richard Balough, and I represent  
21     the Chicago Transit Authority. I'm going to focus on  
22     your Exhibit 75.0.

1                   In particular, I would like to discuss  
2 with you your question concerning the railroad class.  
3 It begins on Line 62. And it says that you agree  
4 with Mr. Bachman's position that customers in the  
5 railroad delivery class do not use 4 kV lines, and  
6 therefore, the ECOSSE over-allocate costs of railroad  
7 delivery class.

8                   Do you remember writing that question?

9           A       Yes, I do.

10          Q       And your answer starts off, "No."

11                   But I would like to find out since it  
12 appears to me to be two questions in one which  
13 question you're answering "no" to.

14                   First of all -- I'm sorry. Go ahead.

15                   As to do you agree -- do you believe  
16 that the railroad delivery class uses the 4 kV  
17 system?

18          A       You use the word "system." They used the  
19 delivery system. My understanding is that --  
20 actually, I don't know. I think I seen one or two,  
21 but perhaps, none in the railroad class, no 4 kV  
22 facilities.

1           Q     And I apologize.  You actually used the  
2     term "lines."

3                     Are you aware of any service to the  
4     railroad class that uses 4 kV lines?

5           A     No, I'm not.

6           Q     And if I understand the second half of the  
7     question, it concerns whether or not there should  
8     be -- whether the ECOSSE currently over-allocates  
9     costs to the railroad delivery class.

10                    Have you done a determination to see  
11     whether or not the ECOSSE does over-allocate costs to  
12     the railroad class?

13           A     You know, I don't know whether it  
14     under-allocates or over-allocates with respect to the  
15     primary voltage facilities, other than in the  
16     cost-of-service we have done.

17                    But if you were to take out the 4 kV  
18     and separate them out, what I would say is the 34, 12  
19     kV and 4 kV distribution system whether there would  
20     be more costs, that would be allocated of a higher  
21     voltage of the 4 kV.

22                    The reason is that you can't just look

1 at voltage as, 4 kV, I don't use; therefore, my cost  
2 should be less, because it's a system.

3 ComEd and all utilities do least-cost  
4 planning and put the least-cost facilities in.

5 So, for example, if you had a system  
6 that was normally 12 kV everywhere down to the  
7 customer and it was cheaper because of the costs to  
8 put 4 kV facilities in a particular area, that lowers  
9 the cost of the entire system.

10 And to pick out the people on the 4 kV  
11 system and to say, You have to pay for the 4 kV plus  
12 all the 12, would be an unfair result.

13 You have to look at it as a system,  
14 the way it's operated, planned and designed.

15 Q Would you agree with me that, for example,  
16 if the 4 kV system is a separate system and the  
17 railroad class takes delivery of 12 kV, that it would  
18 be inappropriate to allocate 4 kV costs to the  
19 railroad class?

20 A If I'm understanding your question, if the  
21 use of the 4 kV does not affect the balance of the  
22 cost of the system, the 12 kV or the location of the

1 substations and other lines, and it is a discrete  
2 subsection, I believe it could be. But I would have  
3 to -- we'd have to know that would be the question.

4 Q But you have not undertaken any studies to  
5 know whether or not the 4 kV system in any way  
6 supports the traction power to the railroad class?

7 A That's a different question than you just  
8 asked me.

9 You've told me that the 4 kV -- I  
10 think we agreed that 4 kV lines do not support  
11 traction; that's different than whether or not there  
12 is in effect a benefit to traction of the 4 kV lines  
13 because it's reduced to 12 kV investment on the  
14 system.

15 You can't peel an onion when it's a  
16 whole. You look at here's 34, 12 kV and 4 kV as  
17 least-cost planned. Just because I don't use 4 kV  
18 doesn't mean that I shouldn't pay for it, because if  
19 that were the case, the residential, for example,  
20 that may be using 4 kV, they would have insisted on  
21 12 kV, so they didn't get pancaked, the cost of 4 kV  
22 which reduced the total cost, plus 12 kV.

1           Q     So it's your testimony that, for example,  
2     that even though the 4 kV lines cannot support  
3     traction power of 12 kV, that the railroad class  
4     should be allocated costs for the facilities that  
5     they cannot use?

6           A     If you look at the primary system as 4, 12  
7     and 34 kV, and it is built and operated and planned  
8     and designed in the least-cost function to provide  
9     the exact same results, and when it is cheaper, you  
10    build 4 kV, because, one, it's cheaper, and two, you  
11    don't need, at that particular place, the size of the  
12    12 kV, then the answer is that is a system that isn't  
13    pulled apart by "I don't use this," "I don't use  
14    this."

15                     And if you are to do some kind of  
16    pulling apart, you'd have to look to see whether you  
17    use or somebody else uses more of the 12 kV than the  
18    allocator that we currently have.

19           MR. BALOUGH:   Your Honor, I would move to  
20    strike that answer as being unresponsive.

21           JUDGE SAINCOT:   Can you read the question back  
22    please.

1 (Whereupon, the record  
2 was read as requested.)

3 JUDGE SAINSOT: The motion is granted. The  
4 answer is nonresponsive.

5 BY MR. BALOUGH:

6 Q I think we agreed that you do not know of  
7 any instance where voltage below 12 kV is used to  
8 serve the railroad class?

9 A I believe I know of no 4 kV Line that  
10 serves the railroad class, yes.

11 MR. BALOUGH: I have no other questions.

12 JUDGE DOLAN: Thank you.

13 MR. GOWER: No questions.

14 JUDGE SAINSOT: Anybody else? No questions?

15 Are we done for the evening?

16 Any redirect?

17 MR. REED: One question.

18 JUDGE SAINSOT: Sure.

19 REDIRECT EXAMINATION

20 BY

21 MR. REED:

22 Q I believe, Mr. Heintz, that you were asked

1 a question whether or not the 4 kV lines don't  
2 support traction power as used by the railroads -- or  
3 I'm close to, I think, the question that I heard  
4 Mr. Balough ask.

5 My question to you is: Do, in fact,  
6 the railroads use the 4 kV lines in the system as  
7 constructed by Commonwealth Edison?

8 A With respect to 4 kV lines, no.

9 Q Okay.

10 A With respect to the primary distribution  
11 system, including the 4 kV lines, yes.

12 MR. GOWER: He answered the question.

13 JUDGE SAINSOT: Is that an objection,  
14 Mr. Gower?

15 MR. GOWER: He answered the question and then  
16 he decided to go on.

17 JUDGE SAINSOT: Sustained.

18 BY MR. REED:

19 Q The follow-up question then is: The  
20 primary voltage consists of what?

21 A 4 kV, 12 kV and 34 kV.

22 Q And I believe you used the analogy to an

1 onion, that when you're looking at the primary class,  
2 you must look at all three of those to determine how  
3 you're going to allocate costs; is that correct?

4 A The function of all three, yes, and to the  
5 extent that they're a system.

6 Q And why is that?

7 A The reason is that when -- if you assumed  
8 that everything came 34 kV to 12 kV, and that was all  
9 that was built, and it was cheaper to build 4 kV in a  
10 certain area because you didn't need the capacity of  
11 the lines in that area and it was cheaper, it would  
12 be prudent on least-cost planning to build 4 kV there  
13 and reduce the amount of the overall investment of  
14 the Company and the amount that all customers pay.

15 As a result, by having 4 kV built  
16 there, that 4 kV is, in effect, a proxy for 12 kV.  
17 It is to bring the voltage down to that customer  
18 group in a least-cost manner.

19 And to say those customers must pay  
20 for their 4 kV system, the 12, on the same basis as  
21 everyone else, and the 34 as the same as everyone  
22 else, would be unfair because they used, in effect,

1 4 kV as a replacement for 12 kV and shouldn't have to  
2 pay the same amount of 4 kV and 12 kV than they  
3 otherwise would. It's a system. You look at least  
4 costs.

5 MR. REED: Nothing further.

6 JUDGE SAINSBOT: Any recross?

7 CROSS EXAMINATION

8 BY

9 MR. GOWER:

10 Q This 4 kV Line that was put in as part of  
11 the least-cost planning process that you just  
12 hypothesized about?

13 A Yes.

14 Q Who is getting the service at the end of  
15 the 4 kV Line? Is it somebody who takes service at  
16 4 kV?

17 A Or lower.

18 Q So when you say it's a system -- and this  
19 goes back to your testimony where you made the  
20 reference to Mr. Lazare's example where you said if  
21 you're going to break the system down and say, those  
22 who take service at 12 kV shouldn't pay for the 4 kV

1 system, then you have to look at the percentage of  
2 cost -- the percentage that the 12 kV users, in fact,  
3 use of the system. Is that your point?

4 A Yes. They may actually use more. It may  
5 be an increase to them in a cost-of-service than when  
6 you take away the 4 kV and you actually allocate  
7 properly the 12 kV.

8 Q But the point that you're making, if I  
9 understood you correctly, isn't that you can't do  
10 analysis, a fair analysis, that doesn't charge the  
11 12 kV users for the 4 kV system. It is simply if  
12 you're going to do that, your thought is then you  
13 have to look at how much of the 12 kV system, in  
14 fact, those 12 kV users use, right?

15 A Yes. And whether you can do so because a  
16 lot of it is maybe age of the facilities, the 4 kV  
17 was put in before. There is a lot of factors. I'm  
18 not the expert to do that study.

19 Q It would be pretty complicated, correct?

20 A Yes.

21 Q That was -- in fact, in the last rate case,  
22 you testified against separating the system between

1 primary and secondary voltages because it would be  
2 complicated and because the Company didn't have some  
3 of the data that you thought was necessary to do  
4 that; is that correct?

5 A That's correct.

6 MR. GOWER: Those are all the questions I have.

7 JUDGE DOLAN: Any redirect?

8 MR. REED: No.

9 There is one housekeeping matter,  
10 though, a clarification that we need to make on the  
11 record.

12 When I identified three of the  
13 exhibits earlier, you were correct and I misspoke.  
14 15.1 is not revised, neither is 15.2.

15 And I have also been advised that 22.1  
16 is also -- we know for sure 15.1 and 15.2 are not  
17 revised. Give me one second to check on 22, if you  
18 don't mind.

19 JUDGE DOLAN: Okay.

20 JUDGE SAINSBOT: No problem.

21 MR. REED: 22.1 is not revised.

22 JUDGE DOLAN: But 22.0 is?

1 MR. REED: That's correct.

2 JUDGE DOLAN: Then with that, we will correct  
3 it in the record, but 15.1 and 15.2 and 22.1 are not  
4 revised?

5 MR. REED: Yes, sir.

6 JUDGE DOLAN: With that, no one else has any  
7 questions for Mr. Heintz.

8 We will be continued till tomorrow at  
9 9:00 a.m.

10 (Whereupon, these proceedings  
11 were adjourned until  
12 January 12, 2011 at the hour  
13 of 9:00 a.m.)

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